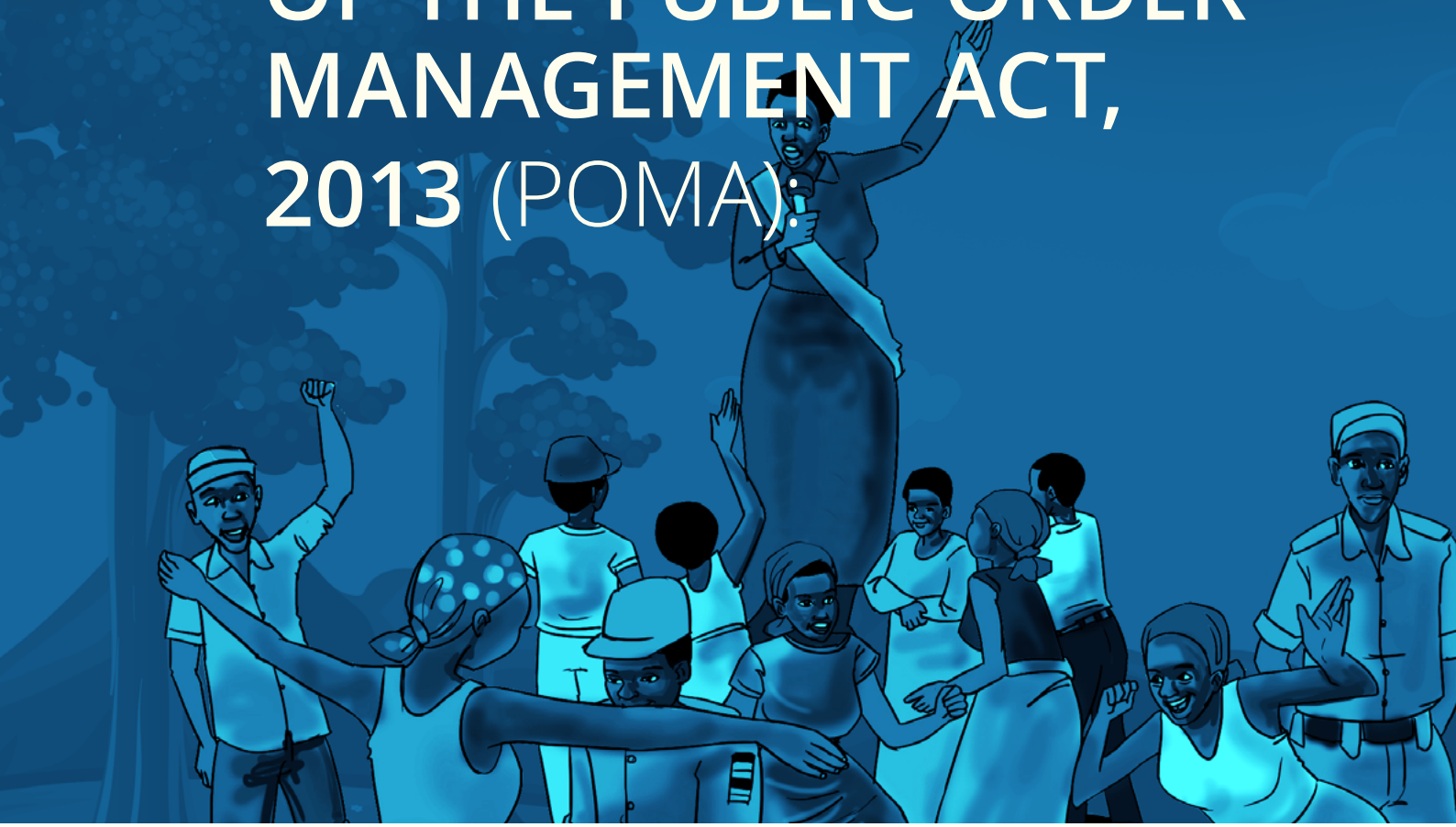
Report

THE IMPLEMENTATION OF THE PUBLIC ORDER MANAGEMENT ACT, 2013 (POMA):



Challenges and Implications for Freedom of Assembly in Uganda: A Case of Public Meetings Organised by Political Parties (2013 - 2019)

Henry Kasacca

December 2019

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Executive Summary

In 2013, the Parliament of Uganda passed the Public Order Management Act, 2013 (POMA) to give full effect to the realisation of the exercise of the fundamental right to assembly granted by the Constitution of the Republic of Uganda. The law was passed with three objectives: to provide for the regulation of public meetings; to provide for the duties and responsibilities of the police, organisers and participants in public meetings; and to prescribe measures for safeguarding public order and for any other related matters. Debating and passing the law was a contentious matter. First, there was fear and concern, especially among human rights groups and the opposition political parties, that the law was passed in an effort to curtail civil and political liberties under a multiparty political dispensation.

Since its enactment, POMA has remained a contentious piece of legislation in Uganda's transition to a functioning multiparty political system. While some activities have been held and facilitated under POMA, many other activities of the opposition political parties have been blocked or dispersed by the police. These confrontations negatively affect the growth of democracy and multiparty politics, and have the potential to build a culture of violence and resistance among the population. While the police has the obligation to facilitate the right to assembly, these confrontations present a negative image of the role of the police as a violator of constitutionally enshrined rights.

Public debate on POMA has in most cases tended to focus on the normative aspects of the right to assemble and compliance with international standards. To understand the escalating level of confrontations between the police and political parties, this study examined the dynamics, mechanisms and processes involved in the implementation of POMA and assessed the extent to which it has facilitated the enjoyment of the right to assembly by political parties in Uganda. The lack of clear mechanisms and processes for engagement between the police and the political parties has greatly facilitated the exercise of the right to assembly. The evidence shows that the police has not raised objections to internal party activities but has blocked most of the activities of political parties aimed at engaging the public on concrete policy issues. There is lack of compliance with the law on the part of the police and the political parties in many cases. While the police has in some cases used non-compliance with all the provisions of the law as a reason for blocking public meetings by political parties, evidence suggests that, even in cases where the police has raised no objection to public meetings, many public meetings have been organised in full compliance with all the requirements of POMA.

Detailed awareness about the details of POMA and the principles of policing public meetings is needed among the political leaders and the police. There is lack of consensus on the need and manner of policing public meetings to ensure that the constitutionally protected rights are safeguarded and public order is maintained. The current law and context have prioritised public order and have tended to be more prohibitive than facilitative. Public meetings are in many cases handled as security issues and the police has paid more attention to security considerations than to the right of individuals to assemble.

There is need for reforms in the law to deal with the very broad powers given to the police in regulating public meetings. More collective dialogue on policing public meetings is required to establish a legal regime that not only safeguards public order but also guarantees the right to assembly by all citizens.

1.0 Introduction

In 2013, the Parliament of Uganda passed the Public Order Management Act (2013) (POMA) to give full effect to the realisation of the exercise of the fundamental right to assembly granted by the constitution. The law was passed with three objectives: to provide for the regulation of public meetings; to provide for the duties and responsibilities of the police, organisers and participants in public meetings; and to prescribe measures for safeguarding public order and for any other related matters. Debating and passing the law was a contentious matter. First, there was fear and concern, especially among human rights groups and the opposition political parties, that the law was passed in an effort to curtail civil and political liberties under a multiparty political dispensation.

Second, the law was seen as an attempt by the executive to reverse a court ruling in the Muwanga Kivumbi vs Attorney General in Constitutional Petition No. 9 in which Muwanga Kivumbi challenged the constitutionality of section 32 (2) of the Police Act which conferred powers on the police to regulate assemblies and processions. Section 32, sub-section 2 of the Police Act provided that if the Inspector General of Police (IGP) has reasonable grounds to believe that any intended assembly or procession is likely to cause a breach of the peace, the IGP may, by notice in writing to the person responsible for convening the assembly or forming the procession,[1] prohibit the convening of the assembly or forming of the procession. Court nullified this sub-section on grounds that it gave the IGP wide powers which could be abused to arbitrarily deny the right of assembly.

Since its enactment, POMA has remained a contentious piece of legislation in Uganda's transition to a functioning multiparty political system. While some activities have been held and facilitated under POMA, many other activities of the opposition political parties have been blocked or dispersed by the police. In the face of the increasing demand by the political parties to exercise their right to assemble, many public assemblies have been stopped or dispersed by the police. Confrontations between the police and political leaders over the right to assemble are building a culture of violence and defiance within the population. This trend undermines the growth of democracy and the building of strong institutions that empower the citizens and demand accountability.

Public debate over dispersed assemblies has been characterised by accusations and counter-accusations. On the one hand, the police has consistently accused the political parties of non-compliance with the provisions of POMA. On the other hand, the political parties have accused the police of acting unconstitutionally in blocking their activities. The police is accused of acting outside the provisions of POMA, of misinterpretation of the law and of partisan conduct.

It is, therefore, important to understand why, in some cases, the police has stopped or dispersed some political party assemblies and why they have facilitated other assemblies of the same political parties. Does the police has clear and objective criteria in deciding which assemblies to facilitate and which assemblies to block? Has the implementation of POMA shifted in objective from facilitating the realisation of the right to assembly to abrogating the same rights when it comes to political parties? Notwithstanding the increasingly vociferous political debate on the right to assemble, particularly as exercised and enjoyed by political parties, no systematic study has been conducted to examine the implementation of POMA as the enabling law.

1 The Police Act, Section 32 (2)

The debate on POMA has stopped at raising the normative aspects. Focus has been placed on whether the law complies with international standards and practices with regard to freedom of assembly. The arguments have been, and remain, that despite the right to assembly being recognised by the constitution, the police is fond of blocking opposition political parties from exercising their rights. On the other hand, arguments have been made that the law only requires organisers of public meetings to notify the police of their intention to hold public meetings. In what has been described as disregard of the law, the political parties have accused the police of assuming powers to grant permission to any person who wishes to exercise their right to assemble.

The police has also raised the concern that the opposition political parties do not comply with all the requirements of the law with regard to the exercise of public meetings. Therefore, the interpretation and application of the law have seen an upsurge in confrontations between the police and the political parties. What has not been discussed are the dynamics that take place between the police and the political parties in the course of exercising the right to assembly. It is these dynamics that tend to define the interface between the police and the organisers of public meetings. These dynamics are not always captured in the debate on the right to assembly and the never-ending confrontations between the police and political parties. Owing to the centrality of the right to assemble in building democracy, there is need to go beyond the normative considerations of whether the law conforms to international human rights standards. There is need to examine the practical exercise of the right to assemble.

Under international and national law, states have the obligations to protect, respect and fulfil the right to assembly and these obligations are performed through the various decisions and actions on the part of the state authorities. How are these obligations being performed in the implementation of POMA?

The right to assemble is a fundamental human right recognised by the Ugandan constitution. Article 29 (1) (d) provides that every person has the right to freedom to assemble and demonstrate together with others peacefully and unarmed and to petition. [2]

The right to assemble is described as a cornerstone of democracy because of its linkage to other rights such as the right to association. It gives meaning and operationalisation to other socio-economic and political rights. For example, the right to food will be demanded if people are able to assemble. The right to assembly gives citizens the opportunity to publicly express their grievances, to petition authorities, to hold governments accountable and to place demands on leadership. Therefore, restrictions on the right to assembly have far-reaching implications for strengthening democracy, and for building democratic institutions and a functioning multiparty political system. With the escalation of confrontations between the police and political parties over the exercise of the right to assembly, there is concern as to whether the Public Order Management Act (2013) is actually facilitating the exercise of the right to assembly or whether it is being used to muzzle critics and block political parties from organising and exercising their right to assemble. Through these confrontations, the right to assembly, as a constitutionally enshrined right, has been violated and denied in many instances.

2 Article 29 (1) (d) Constitution of Uganda

This year, 2019, marks six years since the enactment of POMA. It is important that a study is undertaken on the implementation of POMA to establish whether the law is indeed facilitating the realisation and exercise of the right to assemble or whether it has turned out to be a law that is being used to arbitrarily deny a constitutionally enshrined right. Based on experience with the implementation of POMA, the study will inform debate on the necessary legal and political reforms to enhance the protection and exercise of the right to freedom of assembly. Furthermore, once successfully concluded, the study is expected to contribute to improving the working relations between the police and organisers of public meetings.


POLICE

2.0 Goal study and scope of the study

The frequent and never-ending confrontations between the police and political parties in the course of organising public meetings negatively affect the growth of democracy and multiparty politics, and have the potential to build a culture of violence and resistance among the population. While the police has the obligation to facilitate the right to assembly, these confrontations present a negative image of the role of the police as a violator of constitutionally enshrined rights. This undermines public confidence in the police.

Through examining the dynamics, mechanisms and processes involved in the implementation of POMA, the objective of this study was to examine how POMA is being implemented and to assess the extent to which it has facilitated the enjoyment of the right to freedom of assembly by political parties in Uganda.

Specifically, the study sought to:

1. Analyse the legal-cum-constitutional content of POMA;

2. Assess the realisation of the objectives of the Public Order Management Act, 2013;

3. Examine the dynamics, modalities, processes and mechanisms involved in the implementation of POMA;

4. Assess the extent to which the police and the political parties comply with the provisions of POMA;

5. Analyse the reasons why the police has stopped or prevented the holding of particular public meetings by political parties; and

6. Establish the challenges faced by stakeholders in the implementation of POMA and to offer policy recommendations for reforms.

This exploratory and descriptive study attempted to take stock of some of the challenges in the exercise of the freedom of assembly in Uganda with reference to the implementation of the Public Order Management Act, 2013 (POMA). Specifically, the study focused on activities organised by political parties. The study took an interest in the public perception of confrontations and their consequences with regard to the prospects for the exercise of the right to assembly and the growth of multiparty politics in Uganda. Like any other study, this study faced serious limitations.

First and foremost, the enforcement of POMA is a highly sensitive issue politically. Authority to regulate public meetings is a responsibility of top leadership of the police. Accessing data from the police or getting police officers to be cleared for interview was very difficult. On the part of political parties, poor documentation within the political parties further complicated access to documents relating to notices to the police for public meetings as provided for by law. Many of the political parties do not have correspondence with the police. It is expected that this study will lay the ground for more a comprehensive review of the implementation of POMA to guide the country as to how best to exercise the right to assembly in Uganda as provided for in the constitution.

3.0 Methodology

The study used a descriptive qualitative method. This included document review of the legislation concerning freedom of assembly in Uganda. Other vital literature on case law was also consulted for comparative analysis. Secondary materials were also consulted. These included published literature, reports of human rights organisations, the Hansard of Parliament, published articles from daily and bi-weekly newspapers, as well as news magazines that write about freedom of assembly. Content analysis of all the notifications for public meetings by political parties and the respective responses by the police were analysed to establish the reasons for compliance or non-compliance with POMA. Key informant interviews were conducted to inquire into and describe the nature, interpretation and practices regarding the enforcement of POMA. Interviews were conducted among selected Members of Parliament, the police, lawyers and political party leaders. Others were conducted with representatives of human rights organisations, practitioners and academia.

To understand the nature of engagements and the dynamics of these engagements between the police and the organisers of such public meetings by political parties, the study used case studies of key activities organised by political parties that led to serious disorder and confrontations with the police. The rest of the report is organised as follows. Following this introduction is the theoretical framework that informed the study. Section three presents a review of the debate and literature concerning the right to assembly. The fourth section presents the findings and observations on the implementation of POMA. In the final section, the report presents an analysis of the findings before offering policy recommendations to enhance the exercise of the right to assembly and the policing of public assemblies in Uganda.

4.0 Theoretical and conceptual understanding of policing public assemblies

Literature on policing and regulating public assemblies underscores two main theoretical understandings of the legislation of public order management laws. Waddington (1993) observes that the laws of public order management have had two versions in terms of interpretation and comprehension. The first interpretation, which he also calls the orthodoxy version, looks at public order management laws as attempts by various regimes to suppress any dissenting views.

In this case, the laws are designed to provide for high-handed methods of dealing with public gatherings. Under this theoretical understanding, the laws on public order management include provisions that give excessive powers to the authorities to clamp down on dissenting views. This view is widespread in most discussions on POMA.

According to the proponents of this view, the NRM government passed the POMA in an effort to circumvent a decision of the Constitutional Court that nullified section 32, sub-section 2 of the Police Act. They argue that many sections in POMA gave powers to the police, which powers have been used to violate and abuse people's right to assembly.

The second version of public order management laws looks at the laws as geared towards minimising confrontations, ensuring public order and ensuring the facilitation of the exercise of the right to assembly. This view considers any policing of public order to be aimed at avoiding confrontation and violence. All measures and conditions imposed, as well as all engagements, are geared towards facilitating, protecting and upholding the right to assembly. Even where the police have been given powers that could potentially limit the exercise of people's right to assemble, such powers have been used reservedly and as a matter of last resort. With this version, there is legal justification to arrest or to limit the exercise of the right to assembly but, in most cases, the police or authority limits themselves to engagement.

This study was informed by both these interpretations of the purpose and intention of public order management laws. On the one hand, the law is seen as an attempt to curtail freedom through the various prohibitive sections in the law. On the other hand, the law is seen as primarily providing for the regulation of the right to assembly as provided for under the constitution. Evidence suggests that the application of a particular version has been on a case-by-case basis and depended on the issues and nature of engagement between the police and organisers of these public meetings. The strategy, approach and tactics employed by the police depend on the issues at stake, the perceptions of the police and organisers of these public meetings as well as the nature of engagement between the police and the organisers.

4.1 The right to freedom of assembly

According to the first thematic report of the UN Special Rapporteur on the right to freedom of assembly and association, an assembly is an intentional and temporary gathering in a private or public space for a specific purpose.[3] The right to freedom of peaceful assembly is among the most important human rights. It allows people to 'gather publicly or privately and collectively express, promote, pursue and defend common interests.' [4] The freedom of assembly includes the right to participate in peaceful assemblies, meetings, protests, strikes, sit-ins, demonstrations and other temporary gatherings for a specific purpose.

3 Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association
4 Jacob Zenn, Freedom of Assembly Procedures of Permission and Notification

The right to assembly is a cornerstone of democracy. It has inherent linkages to other human rights but mainly with the freedom of expression and association. These rights share a very close relationship in a democracy. Through freedom of assembly, citizens are able to come together and demand other rights, such as the right to food. With the right to assembly, citizens are able to express themselves and demand accountability from their leaders. This right to assembly is also critical in operationalizing the right to association. With the adaption of multiparty politics, the right to assemble extends to political parties and organisations. Through the exercise of the right to assemble, political parties are able to mobilize support for their policies as well as build political parties as viable and sustainable institutions.

Under Ugandan law, the Constitution of Uganda, Article 29 1 (d) guarantees the right to freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition together with others. Article 43 of the Ugandan constitution provides the general limitation on fundamental and other human rights and freedoms. This article provides that in the enjoyment of the rights and freedoms prescribed in the constitution, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.[5]

Therefore, in the enactment of POMA, both Article 29 (1) (d) and Article 43 were incorporated as the principles of the law. International law states that the right to peaceful assembly can only be restricted in accordance with the law and when it is necessary in a democratic society in the interests of, among other things, public order.[6] The African Charter of Human and Peoples' Rights also states that individuals have the right to assemble freely with others, and that this right can only be subject to 'necessary restrictions provided for by law.'[7] While limitations are provided for under the law, the gist of regulating fundamental rights is basically safeguarding the rights of individuals against arbitrary powers of the state. Much as the authorities have powers to enact limitations, any such limitations should favour citizens' enjoyment of their fundamental rights.

Given that detailed regulation of such rights cannot be assigned to the constitutions, states formulate interventions by enacting legislation to provide for and regulate fundamental freedoms. This provides for the relativity of constitutional protection of fundamental rights. Analysis of such regulation normally takes into account the content of the regulation, the manner in which these rights are to be exercised and guarantees that such regulation is possible. On the question of content, analysis is done to establish if such laws are in conformity with international standards and norms. The conditions and methods of exercising these rights are also a critical factor for analysis. Debate on the regulation also seeks to establish whether the regulation of fundamental rights can be guaranteed under the legal frameworks. The guarantee that regulation is possible can be determined by the possibility of checks on the powers of the state to arbitrarily deny the right to assemble. The possibility of seeking redress in the event that rights are violated and denied must be practically feasible within the legal system.

5 Article 43 (1) 1995 Constitution of Uganda
6 Art 21, International Covenant on Civil and Political Rights; Article 20, Universal Declaration on Human Rights
7 Article 11, African Charter of Human and Peoples' Rights

When detailed regulation of the right to assemble is taking place, two critical factors must be taken into account. First, the regulation must ensure that state power is not undermined. State power is pursued through public order and security. Often legislation must strike a balance between guaranteeing fundamental rights and freedoms and preserving public order and security of the state. In the event that the balance cannot be established, normally the security of the state and public order prevail over fundamental freedoms. This is normally the case in the current war against terror. Various states have violated the rights of citizens in the name of fighting terror. The second factor that must be accommodated in the enactment of regulation concerning fundamental rights and freedoms is the fact that in the exercise of one's rights, the rights of others must be protected and not interfered with. This, therefore, provides for the coexistence and conflict of rights among citizens.

In the event of conflicts, the authorities must rely on objective criteria in guaranteeing that citizens enjoy their rights while respecting the rights of others. The authority should not rely on arbitrary, ideological or political interference in making decisions over rights. This is a key concern that has dominated events and policing public assemblies in many transition countries. In evaluating the implementation of POMA, the clash between these rights has been considered on several occasions.

Several activities over the right to assemble have been blocked by the police on the grounds that exercising these rights could interfere with the rights of others. It is, therefore, important to establish whether the police rely on clear, objective and transparent criteria in determining and making decisions on the right to assembly when it comes to political party activities and how the balance between the right of political parties to assemble is balanced against the rights of others who may not be part of their public meetings. Is there a defined criterion? Is the criterion abstract or arbitrary? Is the current criterion prone to abuse? Is it complicated by the political context in Uganda? What principles and guidelines inform the criterion being employed by the police in such cases?

4.2 Protection of freedom of assembly under international law

The right to peaceful assembly is a fundamental human right, and is enshrined in international law, African regional law and Ugandan national law. Much of the available literature about this right to assembly in Uganda has tended to aim at explaining the laws regarding freedom of assembly. Such publications aim at assisting lawyers, civil society organisations (CSOs), political leaders and the police in understanding the laws regarding the policing of public assemblies in Uganda and the principles the police should abide by, to ensure that the constitutionally enshrined right to freedom of assembly is not arbitrarily denied. Available publications have mainly focused on explaining the legal frameworks, duties and responsibilities of the police, as well as the crimes and penalties that could be committed in the exercise of the rights to assembly. Not much has been written about the practical policing of public assemblies in Uganda.

Article 20 of the Constitution of Uganda enshrines the rights of every person in Ugandan to 'freely and peaceably assemble, associate and cooperate with other persons, express views publicly and more specially to form or join associations or organisations formed for the purposes of preserving or furthering his beliefs or interests or any other interests.' However, under Article 43 of the Constitution, this right can be limited. International law

states that the right to peaceful assembly can only be restricted in accordance with the law and when it is necessary in a democratic society in the interests of, among other things, public order. The African Charter of Human and Peoples' Rights also states that individuals have the right to assemble freely with others, and that this right can only be subject to 'necessary restrictions provided for by law.' Hence, in Uganda, all people have a right to peacefully assemble, but this right can be limited by other laws for the purpose of maintaining public order under the constitution.

Under international law, states have a duty to respect, protect and fulfill the right to freedom of assembly. In this case, citizens must be free to plan, organise, promote, advertise and hold assemblies as well as participate in one such assembly. States should not impose restrictions on the exercise of such rights other than those allowed and provided for in a democracy.

The United Nations Human Rights Committee has upheld the fact that any such limitations or restrictions imposed should aim at facilitating the exercise of the right rather than disproportionately or unnecessarily limiting the right to assemble. Restrictions are always imposed on aspects such as the time and place of exercising the right to assemble, the manner in which the right may be exercised and the requirements to notify the authorities should any person wish to exercise their rights to assembly. In determining these guidelines, the objective is to ensure that persons who wish to exercise their rights are able to exercise the rights without interfering with the rights of others.

On the one hand, but also without undermining the authority of the state, the power and authority of the state is always pursued through public order and security. Under international law, states are also under the obligation to facilitate the enjoyment of the right to assembly. The state is expected to perform and fulfil some positive steps aimed at assisting the citizens to enjoy their right to assembly.

The facilitation entails proper planning of events, establishing effective communication and collaboration with the organisers of public assemblies, the provision of basic services, the protection of the safety and the right of bystanders and adequate training of police personnel to facilitate assemblies. The question of facilitation is at the core of a human rights-based approach. The state must take, as its first basic responsibility, the duty to facilitate the enjoyment of the right to freedom of peaceful assembly. Within this context, public assemblies are not to be seen as threats to be controlled but as social and political processes to be facilitated.

The constitutionality of the various laws regarding freedom of assembly in Uganda has been a contentious issue. In discussing the constitutionality of POMA, questions have been raised as to whether the specific provisions of the law go against the constitutionally provided rights. There are questions as to whether the sections of the law limiting the right to freedom of assembly are so broad as to allow the arbitrary denial of the rights to assembly by the police. Concerns have also been raised that the powers given to the police under the law are more prohibitive than regulatory in nature. Furthermore, there have been questions as to whether the specific section is reasonably necessary to achieve a legitimate outcome of ensuring that the constitutionally protected rights are safeguarded and exercised by the public.

4.3 Right to assembly at the continental level

At the continental level, the question of the right to assembly presents serious and widespread dilemmas. While the majority of the African states have ratified the right to assembly and have signed various treaties and instruments that provide for this right, Africa has witnessed widespread violations of the right to assembly. Many African countries have violated and disrespected the right to assembly in total disregard of their international, regional and national commitments. The African Police and Civil Society Oversight Forum (APCOF) notes that despite the formal recognition of these rights, their practical exercise has been rendered difficult by the legal obstructions or practices that lead to poor management of public assemblies. [8]

In its 2016 report, APCOF notes that there is lack of mechanisms and modalities of communication, negotiation, poor planning, and lack of coordination between the police and the organisers of public assemblies. Therefore, the recurring confrontations undermine public confidence in the police, transparency in police operations and the working relations between the police and the public.

4.4 Guidelines on freedom of assembly in Africa

The African Charter on Human and Peoples' Rights guidelines on the freedom of assembly in Africa spells out 10 key principles that would guarantee a human rights-based approach in safeguarding the right to assembly. First is the presumption in favour of rights. In the event that conflicts arise in the exercise of one's right to assembly, the state has to act in a manner that ensures that the right to assembly is respected, protected and exercised. Cases may appear when certain conditions are not met by the organisers of such assemblies. This principle calls upon the state to ensure that people are able to exercise their right to assembly. For example, persons who wish to exercise their right to assembly may not have fulfilled all the requirements under the law for holding of assemblies. The principle of presumption in favour of rights compels the state to do all in its means and capacity to ensure that the people are able to exercise their right to assemble.

Other important principles are ensuring an enabling environment, inclusive and participatory processes of developing such legislation, impartiality of state agencies, human rights compliance and simple and transparent procedures for one to exercise their right to assembly. Much as the laws provide for procedures and processes for one to exercise one's rights, the principle of simple transparent procedures demands that the state should not institute procedures that literally make it difficult for the citizens to fulfill them as a condition for the exercise of their right to assemble.

There have been cases where the state has used these conditions as a requirement for the exercise of the right to assembly. However, on critical examination, such conditions are disguised as facilitating the right to assembly yet, in actual sense, they are enacted to curtail people's right to assembly. In addition, the guidelines spell out two other critical principles which must be followed in the drafting of the necessary legal framework and the subsequent interpretation during enforcement. These are reasoned decisions and judicial review.

8 Japhet Biegon | Abdullahi Boru | Delly Mawazo, Domestic Adherence to Continental and International Norms in the Practice of Policing Assemblies in Africa, http://apcof.org/wp-content/uploads/2017/05/freedom-of-assembly-in-africa-.pdf

This principle demands that in cases where the state objects to or blocks the exercise of the right to assembly, the responsible authority must provide in writing reasons as to why the right cannot be exercised at a given time. These reasons must be objective and transparent and should not be influenced by ideological or other political considerations. The aggrieved person's right to seek remedy must be protected. In other words, the legal framework and practice in the exercise of the right to assembly must provide for a process of seeking redress in the courts of law.

The incorporation of these principles into the enforcement of legislation aimed at regulating and protecting the right to assembly is critical to ensure that the constitutional rights are not only provided for in the law but are also protected and exercised without confrontation between the citizens and the police. The policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and must adhere to applicable human rights standards. So long as an assembly remains peaceful, the police should not disperse it. Instead of dispersing an assembly, the police has the duty to remove violent individuals from the crowd in order to allow protesters to exercise their basic rights to assemble and express themselves peacefully. The dispersal of assemblies should only be a measure of last resort and be governed by rules informed by international standards.

4.5 The Public Order Management Act, 2013 (POMA)

The Public Order Management Act (2013) is organised into four main parts as follows: Part One presents the preliminary issues; and Part Two provides for the regulation of public meetings. This is followed by the rights and duties of police and organisers of public meetings in Part Three. The last part deals with miscellaneous issues. POMA was enacted to serve three main objectives as far as public assemblies are concerned. These are: to regulate public meetings; to provide for the duties and responsibilities of the police and organisers of public meetings; and to prescribe measures for the protection of public order and related matters. It is important to ascertain how the law provides for each of these in the details.

The gist in these objectives is the regulation of public meetings. According to section 2 of POMA, regulation of public meetings is concerned with ensuring the exercise of freedom of assembly and demonstration in accordance with Article 29 (1) (d) and Article 43 of the Constitution. The spirit of the law was to operationalise the spirit of Article 43. Under this section the idea of regulation is to ensure that the conduct and behaviour of participants at public meetings conforms to the requirement of the constitution. In this case, Article 43 introduces and provides for grounds upon which limitations by be imposed. Basically, Article 43 takes cognizance of the rights of others and the need to provide for the protection of public order and security. That is to say, public assembly is not absolute but tit can be regulated.

Section 3 of POMA provides for the power of the IGP or any authorized officer to regulate public meetings. It is the duty of the IGP to ensure that the conduct of public meetings conforms to the requirements of the constitution. For purposes of POMA, the word 'regulate' means to ensure that the conduct and behavior at public meetings should conform to the requirements of the constitution. In this case, the conduct of public assemblies should conform to Article 29 (1) (d) and Article 43 of the Constitution. Should the public meetings go against, or threaten, these two articles, the IGP has powers to

intervene in the conduct of these assemblies. Within the context of human rights, the powers of the IGP are primarily concerned with instituting measures under which the right to assembly can be exercised without violating the law. Blocking the exercise of the right to assembly is a matter of last resort and this must be determined through an objective and transparent process.

For avoidance of doubt, section 4 defines public meetings as any organised procession, gathering or demonstration in a public place or premises held for the purpose of discussion, petition, acting upon or expressing views on a matter of public interest. This definition of a public meeting embraces three main elements: first, a gathering; second, the venue must be a public place; and third, the purpose of the meeting – discussion, expressing, petitioning and acting upon a matter of public interest. Any gathering that conforms to any of these elements can be categorised as a public meeting to which POMA applies.

Under section 4 (2), POMA provides for meetings that are excluded from regulation by the police. Specifically, section 4 (2) (d) exempts meetings of organs of political parties called in accordance with the constitutions of the respective political parties and organisations. This section explicitly exempts meetings of political party organs that are called to exclusively deliberate on the internal affairs of the political party. This section has been widely misrepresented by political party leaders and has been grounds for confrontations between the police and political parties in many meetings of the political parties. Many political party leaders take the exclusion to cover all meetings of political parties. However, the section is very specific in excluding meetings of the organs of political parties. The organs of the political party exempted are clearly defined under the respective political parties' constitutions. In other words, any meetings of party members, that cannot be defined as meetings of a party organ do not have this exemption. It is also important to note that under this clause, party organ meetings are restricted to deliberating on internal affairs of the party and not any public interest issue.

4.6 Notification for public meetings

The issue of notification regimes when it comes to the exercise of the right to assembly dominates debate in the literature on the right to assembly. Advance notification of public gatherings is a fairly common regulatory procedure around the world. It has been upheld by the UN Human Rights Committee and regional human rights bodies. It imposes an additional restriction and responsibility on organisers of public meetings to notify the authorities of any upcoming assembly. While the right to assembly is a fundamental right and not granted by the state, states always institute procedures and conditions under which this right can be exercised by their citizens.

Such notification procedures serve two main purposes: first, they give the state time to make adequate preparations to facilitate and protect the people's right to assemble. Preforming these roles is an obligation on the state and giving such notice is aimed at cooperation with the state to ensure it is well placed to perform this role.

Second, the state is given notice to ensure that it plans better to ensure that while groups may be exercising their right to assemble, public order and the rights of others are protected in equal measure. The UN Special Rapporteur, Mr. Maina Kiai, also states that

the notification procedure can be considered necessary to 'allow the state authorities to facilitate the exercise of the right to freedom of peaceful assembly and take measures to protect public safety and order and the rights and freedoms of others.' [9]

The requirement for notification of the state authorities should not be construed to mean seeking permission for people to exercise their right to assemble. The key difference between the notification procedure and the permission requirement, therefore, is that the former is based on the legal presumption that no permit is necessary to exercise the freedom of assembly.

The goal of a notification procedure is to inform a competent authority about plans to hold a peaceful assembly in advance, in order to trigger the positive obligations of the state to facilitate the exercise of freedom of peaceful assembly. The requirement to give notice is consistent with the 'principle of presumption' in favour of holding assemblies outlined in the OSCE/ODIHR Guidelines on Assembly, which states: [10]

> *As a basic and fundamental right, freedom of assembly should be enjoyed without regulation in so far as is possible. Anything not expressly forbidden in law should, therefore, be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. In contrast, the underlying rationale for a permission requirement is much more tenuous because it places full power with the state. Where there is a 'permission requirement,' the authorities give approval for using public space for an assembly, which contravenes the essence of the nature of freedom for peaceful assembly.*

POMA requires organisers of public meetings to give notice to the IGP or an authorised officer of their intention to hold a public meeting at least three days and not more than 15 days before the proposed date of the public meeting. [11]

In section 6, the law provides that upon receipt of notice under section 5, where it is not possible to hold the said meeting, due to an earlier notice on the date and venue, and where the venue is considered unsuitable for crowd and traffic control, the authorized officer shall, in writing, within 48 hours on receipt of the notice under section 5, inform the organiser that it will not be possible to hold the said public meeting. It is important to note that in this case, a public meeting can be stopped basing on the above two factors. The law is silent on any other ground upon which the police can stop a public meeting. Much as this is the case, there have been many cases where the police has stopped public meetings.

Under section 6, sub-section 3, when an authorized officer gives notification that the public meeting shall not be held, the meeting shall not take place. This provision is very explicit on stopping a public meeting should the authorized officer give notification. However, the law provides that in such cases, the authorized officer shall invite the organizers to select another date or venue as the case may be. The authorized officer has a duty to

9 Many of the best practices related to notification have been clearly explained in the second report of the UN Special Rapporteur from April 2013 on 'the rights to freedom of peaceful assembly and of association', which was submitted to the UN Human Rights Council pursuant to Council resolutions 15/21 and 21/16

10 See OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, Second edition (Warsaw/Strasbourg, 2010). 165

11 The Public Order Management Act, 2013

give reasons should he/she consider that the meeting cannot take place. It is this written response that provides grounds upon which any aggrieved person can petition the magistrate should they consider that their right to assembly is unconstitutionally being denied. It is important to note that the law does not give explicit mandate to the police to clear, grant permission or allow public meetings to take place. This notwithstanding, POMA gives powers to an authorized officer or any other police officer above the rank of inspector to stop or prevent the holding of a public meeting where the public meeting is held contrary to the Act.[12]

4.7 Debate on the right to assemble in Uganda

The debate on the right to assemble in Uganda has greatly intensified during the last six years of POMA. This debate has tended to focus on the normative aspect of the right to assemble. Literature on POMA and the confrontations between the police and the political parties have laid emphasis on the international standards on the right to assemble. In one of the publications of Chapter Four Uganda on POMA, more attention is given to explaining the law and its limitations as well as the provisions that conflict with international standards.[13]

Specifically, Chapter Four points out the key issues around freedom of assembly in Uganda and the gaps in the enforcement of the right to assemble. These gaps, according to Chapter Four, arise from the limitations imposed in the law. These limitations are in the form of requirements that must be fulfilled for the enjoyment of the right to assemble and crimes that can be committed in the process of exercising one's right to assemble.

Under section 5, sub-sections 8 of POMA, an organiser or his or her agent who fails to comply with the conditions under the act commits an offence of disobedience of statutory duty and is liable on conviction to the penalty of the offence under section 116 of the Penal Code Act.[14] In its annual reports to Parliament, the Uganda Human Rights Commission has noted the continued violation of the right to assembly and made recommendations to ensure compliance with international standards.

As noted in the above survey of the literature on freedom of assembly, much of the debate has revolved around compliance with international standards and violations of constitutionally protected rights. The back-and-forth accusations of the political parties and the police are not helping the entrenchment of the rule of law and the observation and protection of the right to assemble. Much as the different activities that have been dispersed or blocked by the police have been widely reported in the media, much of the coverage has reported on these activities as mere events without raising the human rights issues involved. It is also evident that despite the accusations and counter-accusations between the police and the political parties, no study has been conducted to establish the dynamics and mechanisms of engagement between the police and the political parties with regard to the right to assembly and the implementation of POMA.

12 Section 8 (1) The Public Order Management Act, 2013
13 Chapter Four, What you need to know about your expression and assembly freedom of Association, 2016
14 Public Oder Management Act, 2013

5.0 Findings

5.1 The legal-cum-constitutional content of the Public Oder Management Act (POMA)

The gist in the analysis of the law is the constitutionality of key sections, the wide powers conferred on the police as well as the wide scope of the meaning of public meetings. The law has a very wide meaning of public meetings.

In defining public meetings, the law does not simply consider gatherings but extends to the purpose of the gathering. Any gatherings at which people are to discuss, act upon, petition or express views on a matter of public interest are subject to regulation by the police.[15]

Discussing matters of public interest is the core of political party work and under this law, any such discussion in a public place is subject to regulation by the police. Political parties are, therefore, under obligation to notify the IGP should they wish to hold such meetings.

Referring to section 4, sub-section (2) close (e), political parties have always claimed that party meetings are exempted from regulation by the police. However, the above section specifically exempts meetings of the organs of political parties called for discussing matters that are exclusive to the affairs of a political party. In other words, according to the law, even meetings of organs of political parties called to discuss, act upon, petition or express views on a matter of public interest must be subjected to regulation by the IGP.

The exempted meetings are strictly meetings of the party organs that are called and constituted in accordance with the constitution of the party. For a meeting to qualify for exemption under this clause, those in attendance must be only those members elected to that organ of the party and the discussions in that meeting must be confined to strictly internal affairs of the party. The 4 November 2019 Forum for Democratic Change (FDC) meeting that was scheduled to take place at Mandela National Stadium, Namboole provides a good example.

On that date, FDC called a meeting of the party leadership at Namboole National Stadium. The meeting was to be attended by the district leaders in Kampala and Wakiso districts. According to Mr. John Kikonyogo, the deputy party spokesman, this was an internal meeting that should have been exempted from police regulation under POMA. Despite this, the party had notified the police about the event and they (FDC) claim the police did not formally object to or clear the meeting to take place. According to FDC, the party made efforts to reach the police, including calling senior commanders, about the said meeting but no response was given on the position of the police leadership about the event.

On the day of the event, the police, acting on orders of the Division Police Commander, blocked the meeting and denied the party members access to the venue on grounds that the party had not complied with POMA. In blocking the meeting, the DPC demanded that FDC present evidence that the meeting had been cleared by the IGP. This clearance FDC did not have. Subsequently, angry party members began a march to the party headquarters in Najjanankumbi in protest against police action. This marching to the party headquarters constituted a procession, which, too, must be regulated by the police.

15 Section 4, sub-section (1) Public Order Management Act, 2013

The police tried to stop the procession on the Kampala-Jinja highway. The police deployed tear gas and water cannons to disperse the FDC supporters and arrested Dr. Kiiza Besigye.

On the one hand, FDC insisted on going ahead with their meeting, arguing they had complied with POMA and given the police the required notice. They were also convinced that the Namboole conference for Wakiso and Kampala district leaders was exempted from regulation under POMA. However, the only exempted meetings are those of specific organs of the party and these are also restricted to discussion of internal affairs of the party. The Nambole meeting did not qualify for exemption under POMA. This was not a meeting of a respective organ of the party as provided for in the party constitution. Much as the police may have objected to the meeting, they did not communicate with reasons to FDC about their concerns and why the meeting could not take place. There was no evidence of any correspondence between the police and FDC on the said meeting. On the other hand, the FDC leaders were convinced that this was an internal party meeting that was exempted from POMA. While FDC was convinced that this meeting was exempted, they notified the police about the meeting in an effort to avoid any interruptions by the police. That notwithstanding, the party vowed to defy what they saw as unlawful orders of the police.

The wide scope of the definition of public meetings has made it possible for the police to disperse many political party meetings. Many political leaders have not addressed themselves to the very narrow exemption that the law gives to political party meetings. According to the law, the exempted party meetings are specifically those of party organs and they are further restricted to discussion of the internal affairs of a party. Enforcement of POMA to the letter implies that virtually all political party meetings aimed at the parties' participation and engagement in politics is subject to control and regulation by the police. However, the practice seems that in the event that the police objects to such meetings, no response is given to the political parties.

While the law only provides for objection on grounds that the venue is not available or that the venue is not suitable for crowd and traffic control, the wide definition of what constitutes a public meeting introduces other factors that may be under consideration on raising objection or no objection to public meetings organised by political parties. It is also not clear what criteria the police has used in some of these cases where public meetings by political parties have been blocked. The general statement from the police has been that the activities are being conducted without compliance with POMA.

Much as the political parties give notice to the police, the police in many cases does not write back to notify the political parties that the said meetings cannot take place and give reasons why the meetings cannot be held in accordance with section 6 of POMA. A person aggrieved by the decision of the authorized officer to block them for holding a public meeting has the option of petitioning the magistrate's court to appeal the decision. Under section (6), sub-section (4), a person aggrieved may within 14 days after receipt of a notice under sub-section 6 (1) appeal to the magistrate's court in whose jurisdiction the meeting was scheduled to take place. Unfortunately, no political party has appealed any decision of the authorized officer.

One of the key reasons has been that no political party has received an objection that spells out the grounds upon which an appeal can be filed. In many cases, the police gives the political leaders the impression that their notice is being considered and the police would revert when a decision has been made. Many times the notice periods elapse before the police has reverted. This then gives the local commanding officers grounds upon which the public meetings should be stopped. While the law does not require formal clearance of the public meetings by the police, the demand for proof of clearance by the IGP has become common practice on the part of the Divisional Police Commanders in whose jurisdictions the meetings are scheduled to take place.

Under the said section 8 of POMA, subject to the directions of the IGP, an authorised officer or any other police officer of or above the rank of inspector may stop or prevent the holding of a public meeting where the public meeting is held contrary to this Act. It is under this section that the police have blocked many public meetings organised by political parties. However, there are many other activities that have been blocked on grounds that they have not been cleared by the police.

In a number of cases, the political parties have given the police notice for public meetings but the police has not responded to the notice. Even when the police do not respond to a notice for a public meeting, the meetings have been stopped or blocked on grounds that they have not been cleared by the police. Blocking public meetings on grounds that the police have not yet cleared them is not provided for under POMA and violates the right to assemble.

Under section (6) of POMA, upon receipt of a notice for a public meeting under section (5), where the authorized officer finds that it is not possible for the proposed public meeting to be held, he/she shall in writing notify the organisers that it would not be possible to hold the planned meeting on the date and at the time indicated. Subsequent powers and orders to block a public meeting are issued on the basis of this notification by the authorized officer. The significance of this notification can also be found in section (6), sub-section (4), which provides that any person aggrieved by the decision of the authorized officer may petition the magistrate's court to seek redress. While the police has powers under section 8 to stop or prevent the holding of a public meeting, the said public meeting must be held contrary to POMA. The actions of the police in blocking such public meetings are also constrained by the law and the police must act in accordance with the law as prescribed.

While the law explicitly provides for only two grounds upon which public meetings may not be held, the practice implies that the police has resorted to other considerations in stopping or blocking public meetings. However, the practice of not specifying the grounds upon which a meeting is being blocked undermines the transparency in the conduct of the police. In practice, the police have evoked powers under section 8 even in cases where they (police) have not complied with the requirements under the law.

Under POMA, the police have duties and responsibilities to perform when a notice for a public meeting has been issued. In many cases, these duties and responsibilities have not been performed. Instead, the police have shifted the burden to local police commanders who then demand that the political parties present proof of clearance. In many cases, these commanders have not had explicit instructions to stop the meetings.

They have also not used their internal police communication systems on this matter.

While the police can stop a public meeting if the venue where the public meeting is to be held is unsuitable for purposes of traffic or crowd control or where the meeting will interfere with other lawful businesses, the law does not provide the specifics for a suitable venue, traffic or crowd against which the exercise of the police authority can be measured. The powers granted to the police under this section are vague, open-ended and liable to abuse and political machinations.

5.2 Compliance with the Public Order Management Act (POMA)

The study sought to examine the compliance of the political parties and the police with POMA. These two agencies were considered because the law gives them specific duties and responsibilities. In addition, the law sets procedures and processes that both these agencies must abide by in the policing of public assemblies. A key requirement is that the organizers of public assemblies must give notice of public meetings to the police at least three days before the public meeting and not more than 15 days. The law also provides, under Schedule 2, the detailed information that has to be given to the IGP or his/her authorized officer.

There is evidence that the political parties have given police notice for various public meetings. There is also evidence that the police has stopped or forbidden the holding of many public meetings organized by opposition political parties. In many of these cases, the media has reported that the organizers failed to comply with the requirements of POMA.

Owing to poor documentation on the part of political parties and the decision by the police to decline inspection of the register of notices to the police for public meetings as provided for by law, most of these claims cannot be substantiated with evidence. However, in cases where the political parties have filed notices, all the notices have fallen short of the detailed information required under the law.

While the law requires that organizers furnish the police with details, which include particulars of the organizers, the proposed venue and date of the meeting, the commencement time and duration of the meeting, the number of persons expected, and the purpose of the meeting, the political parties have not complied with this requirement in detail. Most of the parties have mainly communicated the date, venue and purpose of the public meetings.

In other cases, the communication of political parties has been vague in nature, which does not serve the purpose of the notification requirement. For example, in a notice dated 12 September 2017, the Deputy Secretary General of the Democratic Party communicated to the IGP that the DP was going to conduct countrywide activities intended to mobilise the public and sensitise them regarding the Electoral Commission guidelines for the Local Council elections. This letter did not specify the venues of these meetings, the time as well as the expected number of persons. In the said letter, the Deputy Secretary General referred the IGP to the Electoral Commission's road map for further information.[16]

16 SG/03/17 Preparations for Local Council Elections by the Democratic Party, letter addressed to The Inspector General of Police , General Kale Kayihura

In a related letter from the FDC Secretary General concerning activities of the party concerning the lifting of the age limit, the FDC informed the IGP that their leadership in the districts would liaise with the District Police Commanders on the details of the routes for purposes of ensuring smooth traffic.[17] In this letter, copied to the Director of Operations, all Regional Police Commanders and all District Police Commanders, the FDC Secretary General seems not to take into account the responsibility of the IGP under the law and the delegated responsibilities to be performed by the District Police Commanders. The responsibility of delegating the responsible police officer is a preserve of the IGP. POMA defines such officers as authorized officers. Under section 3 of POMA, the IGP or an authorized officer shall have the power to regulate the conduct of all public meetings in accordance with the law.[18] Therefore, assuming or disregarding this power amounts to undermining the power of the state, which the police have rejected. The said meetings ended up in confrontations with the police.

Examining the letters/notices does not make it clear that some of the organizers are aware of the details and requirements of the public order management Act, 2013. None of the letters examined specifically pointed out that it was giving notice to the IGP in accordance with section 5 of POMA and calling upon him to perform his duties in accordance with the same Act.

Under POMA, the IGP has duties under section 9 to preserve law and order before, during and after public meetings. Analysis of the letters or notices reveals that, in some cases, the political leaders seem not to accept the requirements of the notice or are not aware of the necessity of the notice in policing public meetings and exercising the right to assembly.

While this is the case, there is very limited evidence that the police has responded, asking for clarification and providing detailed information in accordance with the law. No such correspondence was available with the Democratic Party.

On the other hand, with FDC there is evidence that, in some cases, where the party has given notice of public meetings outside the prescribed information, the police have written back to the political party seeking clarification or more information regarding the public meeting in accordance with POMA.

On 17 June 2017, the police responded to a notice by the FDC for post-election party retreats. In its response, the police informed FDC that an earlier notice to the police did not comply with the provisions of POMA that required evidence or consent from the venue owner and the proximate number of participants to enable proper planning and deployment of personnel to provide security.[19] In the correspondence, the police attached a form that FDC had to fill in. There is no evidence that FDC responded to the letter. Further support evidence that the police have in some cases responded to the FDC notices is seen in a 28 April 2016 letter from the police to FDC where the police advised the party to fully comply with the requirements and furnish the police with relevant information under the law.[20]

17 Letter to the Inspector General of Police from FDC Secretary General, Nathan Nandala Mafabi, dated 18 September 2017

18 Section 3, Public Order Management Act, 2013

19 Reference No. OPS/175/219/01 letter to the Secretary General, FDC signed by Assuman Mugenyi for Inspector General of Police. 12 June 2017

20 Reference No. OPS/175/219/01 letter to the Secretary General, FDC signed by Dinah Kyasiimire for Inspector General of Police. 28 April 2017

The police has in some cases invited the FDC leadership for a meeting upon receiving a notice from FDC that fell short of the requirements as provided for under section 5 of POMA. On 1 May 2017, the police invited the FDC leadership for a preparatory meeting to discuss, among others, security plans for the party's mobilization and recruitment schedules and advised the party to postpone the said activities until the security preparatory meetings were held.[21] On 20 September 2017, the police wrote to the FDC leaders, inviting them for a meeting about the planned mobilization activities against the lifting of the age limit (amendment of Article 102 (b) in the constitution.

In the said letter, the police wanted to discuss how the activities would be carried out, policed and regulated in accordance with the relevant provision of the law.[22] There is no evidence that FDC responded or attended the said meetings. All these activities were subsequently not allowed to take place and ended up in confrontations.

In other notices, the police have blocked FDC public meetings on the grounds that they are illegal on top of not complying with the requirements of POMA. On 29 November 2016, the FDC Secretary General wrote to the IGP notifying him about the party's intended fundraising function for Makerere University. In the planned acidity, FDC had mobilised parents, guardians, alumni, charity organizations and well-wishers to raise funds for lecturers who had gone on strike leading to the closure of the university.[23] In response, the police notified the FDC that the intended mobilisation for Makerere University was illegal and would not be allowed.[24] In this communication, the IGP also directed the Commander of Kampala Metropolitan Police to take appropriate action. The activity was not allowed to take place.

Similar activities not allowed to take place have been activities organized on public holidays. These have been described as parallel activities to the national celebrations, such as the 54th Independence Anniversary.[25] The police also blocked a number of FDC activities that were intended to involve processions and demonstrations to demand an independent audit of the 2016 general election results.[26] The ground for not allowing these to take place was that these activities had no legal basis under the laws of Uganda.

While a number of activities of the FDC have not been allowed, the police have written back in some cases informing the FDC that the police has no objection to the intended activities. In such cases, the police have also cautioned FDC about the security measures that need to be addressed. Analysis of such no-objection letters reveals that the meetings that the police did not object to were mainly internal party meetings such as launching the policy agenda of the party in March 2015, internal party elections,[27] building party structures and during the national elections.

21 Reference No. OPS/175/219/01 letter to the Secretary General, FDC signed by Assuman Mugenyi for Inspector General of Police, 1May 2017

22 Reference No. OPS/175/219/01 letter to the Secretary General, FDC signed by Nuwagira John for Inspector General of Police, 20 September 2017

23 Reference No. FDC 1.84/IGP/5/11/16

24 Reference No. OPS/175/219/01 VOL 15/40 letter to the Secretary General, FDC signed by Balimwoyo MM for Inspector General of Police, 1 December, 2016

25 Reference No. OPS/175/219/letter to the Secretary General, FDC signed by Warujukwa Erasmus for Inspector General of Police, 5 October 2016

26 Reference No. OPS/175/219/letter to the l, FDC signed by Dinah Kyasiimire for Inspector General of Police, 28 April 2019

27 The New Vision, 5 May 2019

While FDC did not provide the police with all the required information in accordance with the law, no objection was raised on such grounds. On top of giving a no-objection notice, the police cautioned and supported the political party to hold and exercise their rights without any limitations.

It has also been established that in a number of letters to FDC indicating no objection to the intended public meetings, the police has cautioned FDC against holding processions to and from the venue of the event.

The police has also warmed that in case of failure to observe the security concerns, the police would discharge its mandate to protect the lives and property of all citizens by stopping the meetings and apprehending the perpetrators for any crimes committed. In other cases, the police has demanded that FDC ensures that the venue chosen does not interfere with normal activities of the people who are not part of their meetings. In this kind of caution, police give precedence to the rights of others who are not part of the meetings. The right of FDC to hold its assemblies is seemingly regarded as secondary. The police is not seen to be making an effort to ensure that they regulate the assemblies and ensure that all citizens can enjoy their rights. The burden to ensure non-interference is a responsibility of the state with the support and cooperation of the organisers of public meetings. In the case of FDC public meetings, there are many cases where this burden has been placed on FDC.

There have been incidents where FDC has combined a number of activities in the exercise of their right to assemble. For example, the party would organize a district or local branch meeting but add a procession to or from the venue of the meeting. In cases where the assembly has been an internal party meeting, the police has tended not to raise any objection to the meeting but advised against the procession. For example, on 4 May 2018, the police wrote to the FDC Secretary General regarding a notice for a public meeting at which the party was to open the district party branch office in Nawaikoki sub-county, Kaliro district.

In this correspondence, the police raised no objection to the activity of opening the district office but advised the party to follow POMA with regard to a public rally that had been planned to take place after the opening of the party office.[28] However, a number of the FDC leaders argued that such processions that normally follow their activities are not planned events but seem to happen spontaneously.

28 Reference No. OPS/175/219/01 letter to the Secretary General, FDC signed by Assuman Mugenyi for Inspector General of Police, 4 May 2018

5.3 Powers of the police to disperse and stop public meetings

Under section 8, and subject to the directions of the IGP, an authorized officer or any officer above the rank of inspector may stop or prevent the holding of a public meeting where the public meeting is held contrary to the Act. This has been a source of contention between the police and the political parties. To unpack the contention, we examine the circumstances under which the public meeting can be considered to be held contrary to the Act to justify police action to stop or prevent it from being held.

The first section that could be evoked for stopping a public meeting is section (2), sub-section (2), which defines the meaning of 'regulate' under POMA. Under section (2), sub-section (2), 'regulate' means that the conduct and behaviour at a public meeting conforms to the requirements of the constitution. In this case, the conduct and behaviour at a public meeting must conform to Articles 29 (1) (d) and Article 43 of the Constitution. Under 29 (1)(d), people must assemble peacefully and unarmed together with others.

Should the behaviour of participants at a public meeting cease being peaceful and unarmed, the police may stop the public meeting on grounds that it is being held contrary to the Act. Under Article 43, the conduct at the public meeting should not prejudice the fundamental rights of others or the public interest. This clause makes POMA a prohibitive law. It does not envisage the role of the state to facilitate the enjoyment of the right to assembly even when conflicts arise among the citizens. According to this law, the right to assemble takes a secondary position and the law gives priority to the rights of others who are not part of the said public meetings.

Section 4 (1), which provides for the meaning of a public meeting, is a second section that can be used to declare that a public meeting is being held contrary to the Act. In this section, a public meeting is defined as a gathering, assembly, procession or demonstration in a public place or premises held for the purpose of discussing, acting upon, petitioning or expressing views on a matter of public interest. In the light of this definition, virtually all political party meetings in this case fall under the definition of public meetings regulated under the law. The fact that the law is specific regarding the purpose of a public meeting extends the scope of the public meetings which the police may stop or prevent from being held. Much as this sub-section shows the categories of exempted meetings, the law is very categorical on the purpose for which public meetings are called. All the exempted meetings are restricted to discussing matters internal to those organisations.

Where political parties are concerned, under section 4 (2) (e), the exempted meetings are those of respective party organs and these must strictly discuss the internal affairs of the party. Therefore, any meetings of a political party that borders on discussing a matter of national interest can, therefore, be regulated by the police.

5.4 Dynamics, modalities, processes and mechanisms involved in the implementation of POMA

5.4 .1 The perception of the police and the political parties

Despite the fact that section14 of POMA provides that the Minister may, by statutory instrument, make regulations generally for better carrying into effect the provisions or purposes of the Act, no such regulations have been put in place since 2013 when the law

was passed. As such, there has been wide divergence in interpretations and practices by both the police and organisers of public activities. In March 2019 the issue of not having such regulations became a subject of debate at the Inter-Party Organization for Dialogue (IPOD). The political parties agreed to institute a committee to develop the regulations but these have still not been presented by the Minister as provided for in law.

The perception of POMA among the political parties has remained largely negative. The law is considered as an attempt by the regime to stifle the opposition and reverse the gains in civil and political liberties. Many opposition political leaders have rejected the idea that the police can issue objections to public meetings since this right is a fundamental right. As such, correspondence from the police about requiring detailed information from the organisers has largely been ignored. However, there have been cases where the state has made demands or assumed powers to grant permission to hold public meetings. In a number of letters to the Democratic Party, the police have informed the party that their activity has been 'cleared'. Such language that involves 'clearing' a meeting by the police has tended to confer authority on the police to grant permission for holding public assemblies.

Many political leaders read the law selectively and only concern themselves only with the requirement that they only have to notify the police. They disregard the purpose of the notice to the police and look at any possible conditions and requirements by the police as being outside the law. This has led to a breakdown of communication between the police and organisers of public meetings, particularly the political parties.

Still related to perception are the police stereotypes about the opposition. Immediately after the 2011 general elections, FDC launched the walk-to-work campaign. This campaign was seen by various commentators as an attempt to demonstrate the public frustration with the election results and to mobilise civic pressure for change. Following the 2016 elections, FDC launched a defiance campaign that demanded, among others, an independent election audit. This defiance campaign saw the establishment of what FDC called a People's Government aimed at mobilising Ugandans to demand and push for change. These campaigns coincided with uprisings elsewhere, which made the state more interested in containing such uprisings in Uganda.

Against this background, the police have categorized some opposition leaders as militant. The opposition has to an extent been unresponsive to police requests to play by the rules. This has made the opposition unpredictable and potentially uncontrollable through the use of consensual methods. In many of the opposition activities, the police have failed to accept that such activities, despite being near public premises, are not intended to arouse passion and public sentiments that can lead to an uprising in Uganda. The police have largely viewed political parties within a context of building civic pressure and as entities that are not ready to organise within the agreed frameworks. There have been incidents where the police has claimed not to have sufficient personnel to police a public meeting of a political party owing to national events and celebrations. However, in such cases, the police has been able to deploy a very high number of personnel to block the meeting. There has also been very close surveillance of the opposition activities.

5.4.2 Political context

Related to the above defiance campaign, many activities organised by the opposition parties have been interpreted by the police as building a defiance movement whose aim and purpose are not very clear to the police. Talking about defiance is not seen as a democratic campaign and the police and government have vowed to prevent it in the name of preserving or not allowing the undermining of the power of the state. In a 5 May 2019 statement, President Museveni vowed that the opposition will not be allowed to spread lies in the name of holding and exercising their right to assemble. He asserted: If you want to assemble publicly or to hold a procession, it must be for a legitimate reason. If it is to preach hate, to de-campaign investments in Uganda etc., then we shall not allow you, If you want to hold a public meeting or a procession for a legitimate reason, you should liaise with the police, so that your public meeting or your procession does not endanger the lives of other Ugandans or the safety of their property. You agree with the police on the route, if it involves a procession or the venue if it is an event or a rally.

The president accused some members of the opposition for ignoring and planning to hold meetings or processions near markets or through crowded streets.[29]

On the part of the opposition FDC, there is broad agreement that reforms and change within the political system will not be secured under the current frameworks where, it alleges, the powers of the people have been seized. In this context, many activities have been designed to galvanize the public to action. Evidence shows that purely internal activities of the political parties have taken place. However, activities related to mobilizing the population have been blocked. There are many cases where the political parties have chosen to conduct processions even when they were not part of the activities communicated to the police. It is from such activities that confrontations with the police have arisen. In the case of the FDC, the party leaders have organised or engaged in processions to and from venues of public meetings.

5.4.3 Dynamics in the implementation of POMA

The law gives the power to regulate public assemblies to the IGP, to whom all requests have to be submitted. The handling of the notice within the police force is an entirely internal matter of the police.

The first challenge is that, much as the law specifies and demands the details of the police officer who receives the notice, such information is not available. All the political parties complained that the police have deliberately refused to acknowledge receipt of such notices even when they are delivered to the police headquarters. Refusal to acknowledge receipt of such notices undermines accountability and follow-up. There are cases where political parties claimed to have delivered the notices, but such notices have gone missing within the police system.

Political parties have often formed teams comprised of senior leaders, who then have to pursue clearance from the IGP. In some cases, some of these leaders have been successful but, in other cases, they have failed to access the IGP before the planned activity day. In such cases, the political leaders have resorted to insisting that the IGP was served and that the meeting has to take place. Such meetings have ended up in confrontations.

29 The New Vision, 5 May 2019

According to the law, the IGP is mandated to write back to the organisers of the public meeting within 48 hours should he consider that the meeting cannot take place owing to an earlier meeting or should he consider that the venue selected is unsuitable for crowd and traffic control. The law assumed only two factors upon which police can reject a meeting. The evidence has shown that the police has based itself on so many other factors to stop and block public meetings.

There have been many cases where the police has not responded to organisers of such public meetings until the very day of the event. When the political parties give notice, they embark on mobilization for the event, preparation of which involves resources. It becomes very difficult for a political party to postpone an activity whose budget has already been spent and this, many times, becomes the contention and ground why political parties insist that their meetings must take place. Much as the law does not require the IGP to respond if the activity has been cleared, there are cases where the police have responded to the political parties raising no objection to their activities or seeking more information. In other cases, the police has not responded to the notices. When this happens, the local District Police Commanders block the activities on the ground that the organisers have not been able to provide evidence that the activity has been cleared by the IGP. This kind of practice has been very frustrating to political parties and undermines cooperation and collaboration between the police and organisers of public meetings. It also undermines the transparency of the criteria on the basis of which activities are cleared and blocked.

There have been many incidents where the opposition party leaders opted to hold processions to and from public meetings of the party. In such cases, the police has tended to disregard the right of the party to hold activities and concentrated on what they consider as open defiance and disrespect of POMA. In such cases, even when the said activities do not threaten public order and peace, the police have simply relied on its powers under the law to stop or block the meetings.

6.0 Analysis and assessment of the realisation of the objective of POMA

6.1 Ideological differences and concerns

The fundamental challenge with the confrontations between the police and opposition political parties arises out of ideological convictions on the part of the state and the opposition political parties. While some in the opposition believe that political change and reforms should be secured through the people rising up, those in the state view this approach as undemocratic and intended to a mentality that fosters violence and an uprising among the population. On these grounds, the state has tended to describe such activities as security threats. The debate shifts from the civil and political right to addressing security concerns. In some of the correspondence where the police has written to the opposition political parties, the concerns to be addressed have always been of a security nature.

The state has also taken a position on holding meetings in business and market areas. Much as the law does not prevent the holding of meetings in markets and at public facilities such as Parliament, the police has ruled out such places. In other jurisdictions, such as South Africa, the Regulations of Gatherings Act (RGA) 205 of 1993 provides for the regulation of public gatherings and demonstrations at certain places. Under section 7, the RGA prohibits public gatherings in key places such as court buildings. The law, however, creates special exceptions where one can apply to the magistrate should they need to hold their demonstration in a particular restricted space.

6.2 Notification of the public meetings

Much as the political parties have filed notices for public meetings, it is evident that some fundamentally do not agree with the requirement. They also seem not to appreciate its purpose and the intentions of the law in the first place. All notices analysed revealed that they have not filed all the required information as required by law. Many consider the law as an attempt to curtail their constitutional rights. A number of politicians have also disregarded the correspondence and invitations from the police on grounds that such correspondence is outside the law. They consider that their duty is simply to notify the police. On the part of the police, much as they have used the requirement to give notice of public meetings as the primary reason for blocking public meetings, the manner in which the police handle notices for public meetings reveals that giving notice is not the primary consideration.

When political parties give notice, they embark on mobilisation for their meetings. In the run-up to the meetings, the police have issued statements that the planned meetings are not cleared and advised the public to avoid any unlawful assembly. While the police may be issuing caution, it politically demobilizes the meetings. In some cases, the political parties have issued counter-statements and vowed to go ahead with the meetings, insisting that a notice was served to the police. In other cases, some political leaders have sought to engage the police. Much of the engagement has been with the Director of Operations Engagement with the police has been at very high levels, indicating that decisions are taken at those levels.

Failure to access the IGP

Despite the fact that under Schedule 2 of POMA the law provides details of the actions to be taken in a notice filled in for an intended public meeting, the police has not followed this to the letter. The law demands that details of the receiving officer, such as their name and rank, the office held as well as the date and time of receipt of the notice for

the public meeting, be recorded. However, no such records are available. The police officers who have received these notices have not indicated these details and, in many cases, they have declined to acknowledge receipt of the notices. Clause 11 of Schedule 2 under POMA further demands that the IGP provide and record whether the grounds are free or not free for a public meeting. In the event that the meeting cannot take place, the IGP must state the reasons. This, however, does not take place.

6.3 The Public Oder Management Act, 2013 (POMA)

The view has been expressed that POMA is actually not a bad law. The problem is that the police does not implement what is provided for in the law. Following the IPOD discussion on the law, the Prime Minister directed the police not to impose its own guidelines in implementing the law but to follow the law as stipulated. This resolution did not take account of the fact that many political leaders had not followed the laws in a number of incidents. Beside this observation, the law as it is currently provides very wide scope for the police, right from defining what meetings are public meetings under the law and which meetings are exempted.

According to POMA, section 4, a public meeting means a gathering, assembly, procession or demonstration in a public place or premises held for the purpose of discussing, acting upon, petitioning or expressing views on a matter of public interest. Under this definition, the police has the latitude to define most of the meetings as public meetings under the law and would seek to regulate them.

6.4 Assessment of the realisation of the objectives

POMA had three main objectives: to provide for the regulation of public meetings: to provide for the duties and responsibilities of the police, organisers and participants in public meetings; and to prescribe measures for safeguarding public order and for related matters. Overall, these objectives have not been realised in a practical sense largely due to lack of clear mechanisms through which the police and the political parties interact and work with regard to public assemblies. Six years down the road, the Minister responsible has not been able to issue the required regulations.

The lack of regulations leaves interpretation of the law very open. Much as the law provides for the principles, there is need for regulations to operationalise and guide the police on how they can facilitate the right to assembly.

In terms of the law, the duty to regulate public meetings means that the police have to ensure that the conduct and behaviour of participants at public meetings conform to the requirements of the law. Article 29 (1) (d) provides for the right to peacefully assemble and Articles 43 provides for the general limitations on fundamental rights. From the available evidence, the police has mainly focused on granting permission to political parties and not regulating the behaviour and conduct of participants at public meetings. There is no evidence that the police has ever stopped or prevented public meetings on grounds that the conduct of participants was not in conformity with the law. In regulating the conduct of public meetings, the police would be facilitating the realisation of the right to assemble. The police have not played a facilitative role but rather a more prohibitive role. POMA has been used mainly to create an obstacle to political parties' efforts to realise their rights to assemble.

The realisation of the objectives of POMA has also been curtailed by the lack of transparency and the use of objective criteria regarding public assemblies that the police objects to. Evidence shows that the police have not hesitated to clear public meetings that are exclusively on internal party affairs. These have included internal elections and celebrations of the political parties. On the other hand, the police have not allowed any public meetings that have tended to touch on a specific government policy. FDC has suffered most in this case because of the party's defiance and public policy campaigns that the party sought to use to mobilise the masses for action. None of these activities were cleared by the police and, in cases where FDC insisted, such activities ended in confrontations. The opposition political parties made efforts to organise public meetings during the constitutional amendment process, but all these activities were blocked by the police.

The lack of objective criteria can also have been seen in the selective application and performance of the duties of the police under POMA. While the police has an obligation to write to political parties stating reasons why particular public meetings are objected to, this has not always been the case. In most cases, political parties have been informed that their notices are under consideration until the stated day of the public meetings has arrived.

Not providing written objections has also made it difficult for the opposition political parties to appeal to the magistrates in cases where they are dissatisfied with the reasons given by the police for blocking their activities. While the law demands that the particulars of police officers who receive the notices for public meetings from political parties under section 5 of POMA are recorded, this has not been the case.

The police have in many cases refused to acknowledge receipt of some political party notices, which undermines accountability and follow-up. This practice undermines the realization of the objectives of POMA.

The directives of the President on public assemblies have been seen to influence the role of the police in managing public assemblies. Much as the directives of the President have been outside the scope of the law, they are being enforced through the police in non-transparent methods of work with regard to making decisions on public assemblies. The police decisions on public assemblies have largely been made on the basis of the purposes of the assemblies. There have been numerous cases where opposition leaders have made private arrangements with the local police commanders not to block their assemblies. According to Aruu County MP, the Hon. Odonga Otto, many opposition politicians bribe District Police Commanders not to block their local consultations.[30] Other MPs who preferred anonymity confirmed that they have bribed and 'looked after the DPCs very well'. In other cases, they have also bribed the police to block activities or their local political rivals using POMA.

On the part of the political parties, their conduct and behaviour have largely been informed by the thinking that POMA was enacted to curtail freedom of assembly. The controversies that surrounded the passing of the law have continued in its application. Much as the political parties have issued notices as required by law, such notices have been lacked the details required under the law. Despite this, the police has in many

30 Hon Odonga Otto, Parliament Hansard, 27th November, 2019

cases had no objection to the holding of public meetings even when the detailed information has not been provided. However, there are cases where the police invoked these requirements as a way of objecting to a particular public meeting taking place.

On the part of FDC, the party's defiance campaign has also seen the party undertaking activities in total non-compliance with POMA. In many cases, the FDC activities have involved processions to and from the public meetings. While these processions are described as spontaneous activities on the part of the political parties, the active support that the party leaders give them does not absolve them of the responsibility of organising these processions. These processions have also ended up having confrontations with the police.

Many political party leaders do not understand the details of POMA. While many have accused the police of misinterpreting the law, a big number have also misinterpreted the law or lack awareness of the details of the law. Section (4), sub-section (2) that exempts meetings of organs of political parties has been the most misunderstand section. Under this section, the only meetings exempted are those of the specific organs of the party, that are held in accordance with the provisions of the party constitution and to discuss exclusively internal matters of the political party.

Many political leaders, even at the national level, are not aware of the exclusive exemptions and have been part of confrontations with the police whenever they have organised public meetings outside the scope of this provision.

7.0 Policy recommendations and the way forward

While the notice processes and procedure are supposed to be simple and clear, POMA provides that all notices for public meetings are filed with the IGP. This requirement is quite cumbersome for citizens who have to deliver their notices for public meetings at the police headquarters in Kampala.

Much as this is the case, we have yet to obtain empirical evidence to show how local-level citizens have had the police block their meetings owing to failure to deliver a notification to the police headquarters. The majority of the confrontations during activities organised by the national leaders have had a chilling effect on many local-level leaders who lack access to police headquarters or connections within the police.

There is urgent need for the Minister to present regulations which would specifically guide and provide for mechanisms through which the police and political party leaders can engage for purposes of facilitating the right to assembly. While the police has all avenues to engage the organisers of public meetings, the lack of clearly defined mechanisms and of goodwill undermines this engagement.

The law has very broad definitions of public meetings. Basing on the definition of public meetings, all activities of political parties are in essence subject to the regulation of the police under the law. Much as the police has not enforced the requirements with regard to all meetings, evidence shows that this broad definition has been selectively applied where other factors are at play – mainly political considerations. There is need to amend the law to allow space and freedom to political parties to conduct their activities. Discussing matters of public interest is the essence of political party work and subjecting this to the consent of the police undermines the very essence of multiparty politics. The broad definitions are also subject to abuse.

There is need to amend the law, to compel the police to respond to notices, and to provide for explicit interpretations in the event that the police does not respond to the notices for public meetings within the stipulated time frame. Under the current law, POMA demands that the political parties provide consent of the proprietor of the public premises when giving notice of public meeting. In many cases, the proprietors charge for these venues and always demand full payment before the consent can be given.

Blocking a public meeting on the very last day not only violates the rights of the organisers to hold the meeting, but also makes the political parties incur financial losses. Blocking a public meeting on the last day means that the political parties, which are financially constrained, may not have the required resources to reconvene the meeting.

These financial losses have partly been the reason why some political parties have opted to insist on holding their meetings when the police fail to respond to their notices under the law and to provide the necessary support to facilitate the meeting. There is a need to amend the law to explicitly provide a time frame to the police to respond and provide for interpretation in case the police has not responded with any objection.

There is need for further amendment to the law to specifically define the grounds upon which a public meeting can be prevented or stopped by the police. Under the current law, the police may prevent or stop a public meeting if the premises are already booked for another public meeting or if the venue is considered not suitable for crowd and

traffic control. The law does not define what is suitable for crowd and traffic control. This leaves a lot of discretion to the police and much of this discretion has been abused to arbitrarily restrict the rights of political parties to exercise their freedom of assembly. The implementation of POMA has faced both ideological problems and lack of facilitating frameworks and mechanisms to guide the engagement of the police and the political parties. On the part of the police, the directives of the president on public assemblies clearly show the implied responsibility to guide how the right to assembly is to be exercised in Uganda. This implied responsibility is not consistent with the international norms and standards. As a result, the police has no clear objective criterion that demonstrates goodwill and transparency when making decisions on public meetings organised by political parties.

The police has also ignored its duties and obligations as provided for under POMA. The police has also abused its powers under section 8, by blocking and preventing public meetings that do not qualify to be stooped under section 8. This further demonstrates that considerations for public meetings to be stopped are made on the basis of factors other than those provided for under POMA.

On the part of the political parties, the objection to the spirit and intentions of POMA remains a very huge stumbling block in compliance with the requirements under the law. Despite occasionally making public statements with regard to POMA not necessarily being a bad law and accusing the police of acting outside POMA, the majority of the confrontations the political parties have had with the police would not have taken place if the parties had complied with the requirements under POMA.

Detailed awareness about the details of the law and the principles of policing public meetings is needed both among the political leaders and the police. While the law instructs the police, in stopping or preventing public meeting, to take account of the right of individuals to assemble, this has not always been the case. The police have taken their decisions to stop public meetings to be final and all their subsequent actions have been taken on the basis of these decisions. Public meetings have been blocked in total disregard of the guiding principles under POMA and the right to assemble under the constitution.

There is lack of consensus on the need for and manner of policing public meetings to ensure that the constitutionally protected rights are safeguarded and public order is maintained. The current law and context have prioritised public order and have tended to be more prohibitive than facilitative. Under these circumstances, public debate has not advanced the critical challenges but has tended to address the outcomes and confrontations. Uganda is also going through a transition process that is seeing greater demands for rights and political space.

These demands are being pursued under a regime that seeks to guide both the pace and scope of the transition. Much of the debate and decisions on public meetings are taking place within a context of security which obscures and further complicates oversight on the role of the police in facilitating the right to assemble.

POMA issues are reserved for the top leadership of the police and regarded as security matters public discussion of which is carefully guarded. There is need for further consultative processes on policing public meetings in Uganda.

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