

**A REVIEW OF THE PUBLIC ORDER AND MANAGEMENT ACT AND ITS
IMPLICATIONS ON PUBLIC GATHERINGS:
A CASE STUDY OF KAMPALA**

BY

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DECLARATION

I, **BASIRIKA VICTO NAMUKUVE**, do hereby declare that the contents of this study are my original work and other works that have been quoted have been duly acknowledged.

To the best of my knowledge, this work has not been presented before to any university for any award in whole or in part.

Dated at Kampala this^{9th}.....day of^{July}.....2018

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APPROVAL

I Nakamatte do hereby declare that this work being presented to me in partial fulfillment of the requirements for the award of an Under Graduate Bachelors degree of Laws of Kampala International University is an original work which was conducted under my supervision and I hereby proceed to approve the same for the award of the aforementioned Academic qualification.

Dated at Kampala this 9th day of July 2018

Signature Nakamatte

Name. NAKAMATTE FLAVIA

SUPERVISOR

DEDICATION

This piece of work is dedicated to my dearest brother LUJJA JONATHAN who has throughout my Academic life and beyond, continued to support me in all respects and have hitherto been very pivotal in guiding me. May the Almighty God forever bless you.

My special appreciation goes to my late mother NABAKOOZA ROSE for financially facilitating my study, without your support and assistance this research would not have been undertaken.

ACKNOWLEDGEMENT

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In the same vein, I render my most sincere gratitude all my family and friends at Kampala International University and the entire Staff therein (both teaching and non-teaching) for the love, support and untiring encouragement and prayers, words can never convey how much I appreciate you all for your support in bringing out this piece of work.

I owe tremendous appreciation and respect to my supervisor NAKAMATE FLAVIA who selflessly and patiently supervised me and provided me with a wealth of information, experience and encouragement throughout this research.

To all the aforementioned persons, I shall forever remain indebted.

LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights
FHRI	Foundation for Human Rights Initiative
ICCPR	International Covenant on Civil and Political Rights
JLOS	Justice, Law and Order Sector Secretariat
KY	Kabaka Yekka
POMA	Public Order and Management Act, 2013
UPC	Uganda People's Congress
UPF	Uganda Police Force

TABLE OF CONTENTS

DECLARATION.....	i
APPROVAL.....	ii
DEDICATION.....	iii
ACKNOWLEDGEMENT.....	iv
LIST OF ABBREVIATIONS	v
 CHAPTER ONE.....	 1
INTRODUCTION.....	1
1.1. Background to the study.....	1
1.1. Background to the study.....	2
1.2 Statement of the Problem	3
1.3 Objectives of the study	4
1.3.1 General Objectives	4
1.3.2 Specific objectives.....	4
1.4 Research hypothesis	5
1.5 Scope of the study.....	5
1.5.1 Geographical scope.....	5
1.5.2 Time scope.....	5
1.6 Significance of the study	5
 CHAPTER TWO.....	 6
LITERATURE REVIEW	6
2.1 Introduction	6
2.2 History of Public Order Management in Uganda.....	6
2.3 The Public Order Management Act,2013 is enacted.....	7
2.4 The Uganda Police Force	9
2.5 Freedom of Peaceful Assembly.....	10
2.6 Conclusion.....	12

CHAPTER THREE.....	13
RESEARCH METHODOLOGY	13
3.0.Introduction:-.....	13
3.1. Research Strategy	13
3.2. Research Design.....	13
3.3. Data Collection.....	14
3.4. Source Of Data Collection	14
3.5. Data Collection Methods.....	14
3.6. Ethical Considerations.....	14
3.7. Anticipated Constraints	15
CHAPTER FOUR	16
THE PUBLIC ORDER MANAGEMENT ACT AND ITS IMPACT ON PUBLIC	
GATHERINGS IN KAMPALA	16
4.1. Introduction.	16
4.2. Definition of public order.....	16
4.3. Public order management.	17
4.4. Freedom of peaceful assembly.	17
4.5. Provisions of the public order management act.	18
4.5.3 Facilitation of Simultaneous assemblies and counter demonstrations	21
4.5 Duties of the police	24
4.6. International standards regarding the public gatherings and their management	26
4.7. International policing standards and the management of public.....	27
4.8. The Uganda Police Force	29
4.9. The pre-2016 general elections period	32
4.10. Methods and equipment used	33
CHAPTER FIVE	36
RECOMMENDATIONS AND CONCLUSION.....	36
5.1 Introduction	36

5.2. Recommendations	37
5.2.1. Under elections.....	37
5.2.2. To the Government of Uganda.....	37
5.2.3. To the Ministry of Internal Affairs.....	38
5.2.4. To the Uganda Police Force	39
5.2.5. To the Parliament of Uganda	39
5.2.6. To the UN special Rapporteur on the rights to freedom of peaceful Assembly and of association	39
5.2.7 To the African Commission on Human and Peoples' Rights	39
5.3. Conclusion.....	39
BIBLIOGRAPHY	41

CHAPTER ONE

INTRODUCTION

1.1. Background to the study

Following the public disturbances that have rocked the country in the past, notably the ‘save Mabira’ riots of 2007, the September riots of 2009 and the walk to work demonstrations which claimed more than 40 lives and destruction of property worth of billions of shilling, the need for a law governing demonstration and public assemblies reached the epitome. Consequently, the Ministry of internal Affairs and the Uganda Police Force proposed a Public Order Management Law Bill which later became law hence the Public Order Management Act, 2013.

The Public Order Management Act, 2013 was enacted to provide a regulatory framework for Public assemblies. It, amongst others, grants people in Uganda the right to Public Assembly whilst bestowing upon persons who participate in the same, the obligation to do so peacefully.

It however gives wide discretionary powers to the Uganda Police force to deny and disperse any Assemblies. It controls rather than regulates assemblies when it subjects free expression to the whims of the Inspector General of Police to determine whether people as individuals or collectively as associations can freely exercise the freedom of expression. It goes beyond to control the content of the meeting or gathering discussions on politics or examining the performance of the elected government, not least its failures.

This law bestows upon the Courts of Judicature in Uganda the duty to consider the circumstances and apply the community standards of the day when determining whether particular behavior constitutes an offence.

Criminalizing public gatherings behavior necessarily involves an important balancing act, one which must strike a fair compromise between the rights of individuals to engage in certain behavior that might not ordinarily warrant criminal justice system intervention, and the rights of all sectors of the community to be able to enjoy public places.

1.1. Background to the study

The Constitution of the Republic of Uganda, 1995 (as amended)¹ grants Parliament the power to make laws for the peace, order and good governance of Uganda. Pursuant to this, there has been the passing of legislation to regulate Public gatherings which is the Public Order and Management Act, 2013. The same Constitution establishes the Uganda Police Force and grants it the duty to, primarily, keep law and order in Uganda. This duty includes, but is not limited to, managing Public gatherings and ensuring that they are conducted in a peaceful manner.

The right to hold and participate in public gatherings is enshrined in international, regional and even domestic laws as fundamental freedoms and their origins are inherent and rooted in the fact that current human society stands on the cooperation of persons in such a community. No single person can live totally independent of others, as Unity is strength. Prudent to note is that people come together in pursuance of their common interests as this is a prerequisite for a democratic and just society. Hence, any state which boasts of democratic principles should not only protect such rights as a matter of principle and in theory, but should also provide a conducive atmosphere for their protection, like providing security during the holding of public gatherings.

It should however be noted that this right and freedom of assembly is not absolute, since in certain situations it is permissible to deprive people of this right, or even grant it, but with numerous restrictions. In such circumstances of deprivation or restriction, the authority in a democratic society should show that its action has a proper basis in law and is necessary and proportionate in order to; protect national security or public safety, prevent disorder or crime, protect health or morals, protect the rights and freedoms of other people.

Noteworthy is that a “proportionate” response to a problem is one that is more than necessary and is appropriate and not excessive in the circumstances.

Over the recent years in Uganda, there has been the passing of laws whose provisions directly affect public gatherings and assemblies. Similarly, Uganda has ratified International and Regional Instruments which have an effect on public gatherings.

For instance, with the passing of the Public Order Management Act of 2013, as one of such legislation, there was, on one hand, great anxiety over its possible impact on some sections of

¹ Article 79

the society especially members of the opposition who saw this as a move aimed at significantly affecting their freedom of Assembly.

On the other hand however, other groups of persons were immensely pleased by this development in Uganda's legislation as it would allow the Uganda Police Force to have a firmer grip and control of public order. The same was also seen as an opportunity for the Police to have a better response to public concerns often relating to insecurity and the behavior of persons holding public gatherings, as these had increasingly become a threat to peaceful public gatherings, in some instances leading to public disorder and at times violence.

The foregoing should hence be borne in mind by the relevant authorities, chief of which is the Uganda Police Force in the circumstances of this research, whilst implementing the laws governing Public gatherings.

Additionally, the various methods employed by the Force in executing their roles as regards regulating public gatherings and making sure they are orderly with peace being at the center of it all should be given due attention.

1.2 Statement of the Problem

The Law Reform Commission is required by law to conduct a review of the laws in Uganda, including laws relating to Public Order management and public gatherings.

The primary laws in Uganda that regulate public gatherings are The Constitution of Uganda and the Public Order Management Act, 2013 and the provisions of the latter have increasingly been seen as a way of unfairly suppressing public gatherings especially those of the opposition and the right of assembly in Uganda, especially in Kampala.

During the Parliamentarians' deliberations preceding the passing of the Public Order Management Act of 2013, the then Prime Minister of Uganda, Rt. Hon. John Patrick Amama Mbabazi, explained that the change would help to address community concerns and expectations and respond to serious, widespread complaints concerning the behavior of some people while they use public places.² It was further argued that the Act³ was to be a "living document" that would adopt over time with community standards and that the Courts would

² Parliamentary Hansards, 13th April 2013

³ The Public Order Management Act, 2013

play an important role in determining what would fall within the confines of the new Public Order Management Act of 2013.

In executing their roles whilst regulating and implementing the POMA, the Uganda Police Force has often come under intense criticism, especially by opposition members in Kampala, for their methods employed in executing such roles.

Many a time, the actions of the Police which have been premised upon provisions of the POMA, has seen opposition gatherings being branded as unlawful for failure to follow procedure, for instance giving the UPDF notice of an intended assembly and subsequently leading to the arrest and detention of opposition politicians, dispersing such gatherings, amongst others.

Such steps taken by UPDF have made the latter to be tagged as “an instrument used by the state to suppress the opposition in Uganda.”

1.3 Objectives of the study

1.3.1 General Objectives

The overall aim of this study is to make a deep analysis of the impact the Public Order and Management Act has had on public gatherings and the modes and methods that have been employed by the Uganda Police Force in their attempt to implement it.

1.3.2 Specific objectives

Owing to the general nature of the foregoing, the same has been broken down into specific objectives. This study, hence, aims at achieving the following specific objectives:

- i. To review the Public Order and Management Act, 2013 and to examine its implications on public gatherings.
- ii. To identify the rights and obligations, if any, of people in Uganda as they participate in public gatherings
- iii. To identify the roles of Uganda Police Force and the methods they have employed in implementing Public Order and Management Act, 2013 and to ascertain whether it has executed its roles in conformity with the standards set by the enabling law.
- iv. To suggest possible recommendations for closing up loopholes, if any.

1.4 Research hypothesis

This study presupposes that whereas the POMA was put in place to organize public gatherings, it has in some instances been used by the Uganda Police Force as an excuse to employ unnecessary force and unreasonable methods in implementing this law which has greatly affected public gatherings.

1.5 Scope of the study

1.5.1 Geographical scope

The study is centered in Kampala Capital City, as it is where most public gatherings occur and the headquarters of the Uganda Police Force are located, with a majority of the latest equipment for managing public assemblies.

1.5.2 Time scope

This study is limited to the period between 2011 and 2016, the same covering the five year period in which two General Elections were conducted in Uganda and also the one in which Uganda witnessed the enactment of the key Public Order Management Legislation.

1.6 Significance of the study

This research study provides an in-depth into the Public Order and Management Act, 2013, which was been passed to guide public gatherings in Uganda. Further, the rights and obligations of persons who participate in public gatherings will be analyzed herein, not forgetting the roles of Uganda Police Force and the methods they have employed in implementing this law. The question of whether these duties by the force have been legally executed is also tested and thereafter possible recommendations will be suggested to close-up loopholes, if any.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

Whereas much literature has been written about the recently passed law governing Public gatherings, the Public Order Management Act, 2013 and the modes employed by the Uganda Police Force in implementing this law, the criticism leveled against them by some authors and commentators has also been premised on the human rights perspective which have hitherto been advanced by them.

This study, as aforementioned, has many aspects which have been molded with great reliance on the existing educational and legal materials, including but not limited to, Newspaper Articles, Online sources, relevant Case law, Reports and Speeches of human rights Activists.

2.2 History of Public Order Management in Uganda

From 1958, there were increased political activities in Uganda which presented fresh problems for the government and the police. At one period a trade boycott in Buganda threatened not only the country but also its economy. Initially, this boycott was aimed at Asian traders but it soon got out of control and was accompanied by a crime wave of arson, robberies, bomb outrages and general violence. Several government actions including declaring of boycotts as illegal as well as strong police action became necessary for control to be regained.

During the four years before independence, statistics for crimes committed in connection with periods of unrest reached a new high level. In 1960, in Bukedi, riots took a large toll of lives and damage to property. In Mengo a flare-up of intertribal trouble resulted in a number of deaths in one village and Karamoja cattle rustling continued to demand the strengthening of police manpower in these districts. A special force was frequently engaged in preventive and punitive actions all over the country.

After independence there was a decline in the force's image as there was an assault on political and human rights around 1964 when fissures developed in the UPC-KY alliance. Many people including ministers were arrested and detained without trial.

During Amin's rule there were instances of people disappearing like Chief Justice Ben Kiwanuka. In February 1977, Church of Uganda Archbishop Janani Luwum was murdered and the police submitted a "traffic accident" to conceal his brutal murder. During Amin's eight year rule, the army interfered in police work and would often arrest without a warrant of arrest. Citizens were often manhandled and rudely treated in public places even when they didn't offer the slightest of resistance.

2.3 The Public Order Management Act, 2013 is enacted

In 2013 shortly after the enactment of the POMA, in an interview with NTV, Uganda's then Prime Minister Rt. Hon. **John Patrick Amama Mbabazi** insisted that the new legislation was good for all Ugandans. He added that one of the constitutional duties of the Uganda Police Force⁴ is to protect every citizen and give them an opportunity to exercise their freedoms and rights in Uganda, including the freedom of assembly and association.⁵

Section 32 (2)⁶ gives the Police the power to prohibit any demonstration which, in their opinion, is likely to lead to a breach of peace.

However, the Constitution⁷ guarantees the right to freedom of assembly and to demonstrate together with others in a peaceful manner. It should also be noted that the right to Assembly is inherent; hence it can't be taken away from any person.

Nicholas Opio, who was once the Secretary of the Uganda Law Society, described the POMA as "a law that grants the Police powers to regulate meetings in public places, public roads or even private places, at which the failure of the government and their policies or any political parties, are to be discussed."⁸

He added that, "It is a law giving the Police the mandate to regulate meetings at which petitions to the government are to be drafted by a pressure group."⁹ In essence, this Act gives the Police the right to control and give or deny consent to any meeting they consider as holding political interest.

⁴ The Constitution of the Republic of Uganda, 1995(as amended), article 212.

⁵ *Ibid*, Article 29.

⁶ The Police Act, Cap. 303

⁷ Article 29 (1) (d)

⁸ Demystifying the Public Order Management Bill (August 2013)

⁹ *ibid*

On the streets of the capital where the founding Editor, **Rajat Neogy**¹⁰ had sought to understand the centrifugal forces shaping Uganda's, and therefore Africa's democratic future, familiar scenes of brutal repression-police with teargas and batons, live bullets and disappearances-were being played out. Then, as now, Uganda was caught in the headwinds of the desire for change and by the inability (or perhaps the unwillingness) of such change to be negotiated peacefully, civilly and without bloodshed.

Maina Kiai, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, asserts that;

"Any restrictions imposed must be strictly motivated by the limited concerns which are prescribed by law and which are necessary in a democratic society, in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of other States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of covenant rights."¹¹

Section 4(1)¹² defines a public meeting to mean a gathering, assembly, procession or demonstration in a public place or premises held for the purposes of discussion, acting upon, petitioning or expressing views on a matter of public interest.

Section 3 of the same law gives the Inspector General of Police, or an authorized officer, the power to regulate the conduct of all public meetings in accordance with the law. In effect, the Uganda Police Force is given powers to prohibit and disperse public gatherings of a political nature.¹³ However, the above provisions reintroduce **Section 32** of the Police Act¹⁴ which was found to be unconstitutional by Uganda's Constitutional Court which inter alia ruled that, subsection (2) of the Police Act authorizing the police to prohibit assemblies, including public rallies and demonstrations was unconstitutional as it would be giving the police

¹⁰ The 2011 issue of the Literary magazine, *The Transition*, founded in Kampala in 1960s run a "Uganda" issue that included an article with the evocative title "Season of dissent"

¹¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14th April 2014, A/HRC/26/29, Para.21

¹² The Public Order Management Act, 2013

¹³ Amnesty International, "Public Order Management Act is a serious blow to open political debate" 5th August 2013, [http:// www.amnesty.org/en/news/Uganda-public-management-order-bill-serious-blow-open-political-debate-2013-08-05](http://www.amnesty.org/en/news/Uganda-public-management-order-bill-serious-blow-open-political-debate-2013-08-05)

¹⁴ The Police Act 1994, Cap 303.

powers to impose conditions, which are inconsistent with the provisions of Article 29 (1) (d) of the Constitution.¹⁵

2.4 The Uganda Police Force

2.4.1 The history of police repression

The use of the police as an instrument of state repression and a tool of the ruling party has a long history in Uganda. Idi Amin's oppressive regime which lasted from 1971 to 1979, deployed the Public Safety Unit and the State Research Bureau to torture and murder people¹⁶. During his reign of terror Amin passed a decree that allowed the Police to get away with the abuse of power as long as it was done for the purpose of maintaining public order or public security in any part of Uganda or for the defence of Uganda¹⁷. No such decree exists today and Museveni's regime is credited with speaking against acts of impunity by the military and the police.

2.4.2 Police management of public order

On the face of it the Public Order Management Act seems harmless, but the law gives the police broad powers of discretion to shut down political meetings or stop them from taking place for trivial reasons¹⁸. On top of this the Uganda police force was militarized and politicized by its then Inspector General of Government, Major-General Kale Kayihura¹⁹. The militarization and politicization of the police raised a crucial question about the handling of protests during the 2016 elections: to what extent were they maintaining law and order rather than quelling resistance to an authority protestors perceived illegitimate?

Further, the Secretary-General of the ruling party, **Justine Lumumba**, went so far as to threaten state violence stating that protests against the election results would be tantamount to disrupting peace²⁰. Such rhetoric reinforced justified the use of heavy-handed public order policing methods. The use of violence was common at election protests and opposition rallies. It also legitimized the suppression of those characterized as threatening the peace.

¹⁵ Muwanga Kivumbi Vs Attorney General (Constitutional Petition No. 9 of 2005)

¹⁶ Sophie Nakueira ; Heavy-handed police tactics raise concerns about democracy in Uganda. The Conversation <http://theconversation.com/heavy-handed-police-tactics-raise-concerns-about-democracy-in-uganda-55517>

¹⁷ ibid

¹⁸ ibid

¹⁹ ibid

²⁰ ibid

However, there has also been some criticism on the POMA and the manner in which the police has enforced it, for example, **UHRC**²¹ which is a constitutionally recognized organization as per Article 51 aims at protecting and promoting human rights has greatly criticized the excessive use of force, firing of live bullets and brutal arrests of suspects during peaceful assemblies these have led to abuse of human rights by the police. The organization has mainly pointed out areas in which police has used such force like during the brutal arrests of opposition leaders during walk to work period in 2011.

The police's actions have perpetuated fear that is normally associated with an autocracy instead of a democracy. This has served to delegitimize the authority of the police as peacekeeper and that of the state as capable of protecting its citizens.

2.5 Freedom of Peaceful Assembly

According to the **Guidelines on Freedom of Peaceful Assembly**²², the right to assemble peacefully, together with freedom of expression and freedom of association, rests at the core of any functioning democratic system²³.

The first guiding principle on Freedom of Peaceful Assembly is the presumption of holding assemblies. It states that as a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation and anything not expressly forbidden by law should be presumed to be possible and those wishing to assemble should not be required to obtain permission to do so²⁴.

The state has an obligation to facilitate and protect peaceful assembly. It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation²⁵. The state should always seek to facilitate and protect public assemblies at the organizers' preferred location and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded²⁶.

²¹ Uganda Human Rights Commission

²² Prepared by the OSCE/ODIHR Panel of Experts on the freedom of Assembly

²³ Foreword to the Guidelines on Freedom of Peaceful Assembly

²⁴ Paragraph 2.1 Guidelines on Freedom of Peaceful Assembly.

²⁵ *ibid* Paragraph 2.2

²⁶ *ibid*

The third principle is that any restrictions imposed must have a formal basis in law and be in conformity with the European Convention on Human Rights and other International Human Rights instruments²⁷.

Any restrictions imposed on freedom of assembly must be proportional that is to say the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference²⁸. The Guidelines go on to say that the principle of proportionality requires that authorities do not routinely impose restrictions that would fundamentally alter the character of an event, such as relocating assemblies to less central areas of a city²⁹.

The other principle is the principle of non-discrimination. In regulating freedom of assembly the relevant authorities must not discriminate against any individual or group on any grounds³⁰. Freedom of peaceful assembly is to be enjoyed equally by everyone.

Good administration is another guiding principle for freedom of assembly. The public should be informed which body is responsible for taking decisions about the regulation of peaceful assembly and the regulatory authority should ensure that the general public has adequate access to reliable information about its procedures and operation³¹.

The regulatory authorities must comply with their legal obligations and should be accountable for any failure -procedural or substantive- to do so³².

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 standards³³. The Guidelines also provide that the state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Law enforcement officials must also protect participants of a peaceful assembly from any person or group that attempts to disrupt or inhibit the assembly in any way.

The right to freedom of assembly, as well as its limits, is clearly enshrined under **Article 29 (1) (d) and (e)** of the Constitution³⁴. Article 38 (1) and (2) of the Constitution proceed to

²⁷ *ibid* Paragraph 2.3

²⁸ *ibid* Paragraph 2.4

²⁹ *ibid*

³⁰ *ibid* paragraph 2.5

³¹ *ibid* paragraph 2.6

³² *ibid* paragraph 2.7

³³ *ibid* paragraph 5.3

³⁴ The Constitution of the Republic of Uganda, (1995) as amended

provide for the limitation of such rights and most national Constitutions and fundamental laws establish similar principles.

2.6 Conclusion

The study beforehand seeks to review the impact of the POMA on public gatherings and analyze the role of Uganda Police Force in implementing this law, together with the methods and apparatus employed in so doing. Further, the criticisms leveled against the Force as it seeks to perform its duties will also be highlighted, whilst considering the role of other stakeholders like the organizers and participants of such public gatherings.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0.Introduction:-

This study was designed to analyze the POMA and its implications on public gatherings.

The chapter therefore focuses on the Research Methodology that I employed in my study.

Research methodology is defined as the procedure which the researcher intends to adopt in the gathering of information.³⁵ These are discussed below;-

3.1. Research strategy

According to Saunders et al (2009, pp600), “a research strategy is defined as the general plan of how the researcher will go on about answering the research questions.”³⁶ The same was defined by Bryman (2008) as “a general orientation to the conduct of research.”

Research strategy has a number of components which include the following: - research design, research approach, methods of data collection and research limitation.

3.2. Research design

A research design is defined as a plan, structure and strategy of investigation so conceived as to obtain answers to research questions or problems.³⁷ The same was further defined by Mouton (2001; 56) as “an architectural design or blue print of a research project and the execution of the design, the research process or methodology as the construction process using methods and tools.

Since this study is about the POMA and its implications on public gatherings I employed **Cross section study design.**

3.2.1. Cross Sectional study design

This design is best suited to studies aimed at finding out the prevalence of the situation, problem, phenomenal and observations for a short period of time.

³⁵ Oxford Advanced Learner's Dictionary

³⁶ Usir.salford.ac.uk

³⁷ Research Methodology by Ranjit Kumar

I used this type of study design to deeply analyze the impact that the POMA has had on public gatherings and the modes and methods used to enforce it by the police.

My aim was to also find out what the implications of this legislation on the people's right to assemble are so as to ascertain if it was in conformity with the Constitution of Uganda as it's the supreme law of the Uganda.

3.3. Data collection

Data collection is the process of gathering and measuring information on variables of interest, in an established systematic fashion that enables one to answer stated research questions, test hypothesis and evaluate outcomes.³⁸

3.4. Source of data collection

3.4.1. Secondary Data collection

It is defined as published information available from other sources that has already been gathered.³⁹ The same was also defined as data collected by someone other than the user and its common sources are censuses, information collected by government departments, organizational records, and data that was originally collected for other research purposes.⁴⁰

3.5. Data collection methods

3.5.1 Literature Review method

I relied on secondary sources to collect secondary data, using the literature review method, which is the technique used to categorize, investigate, interpret and identify the limitations of physical sources, most commonly written documents, whether in the private or public domain (personal papers, commercial records, or state archives, communications or legislation).

3.6. Ethical considerations

This study mainly relied on secondary data; this means the study was based on data collected by others. Data sources will therefore be disclosed in the main text and details in the references without claiming them to be researcher's own sources.

³⁸<https://ori.hhs.gov/n-illinois-uctopic>

³⁹<https://www.slideshare.net>

⁴⁰<https://en.m.wikipedia.org/wiki/secondary>

3.7. Anticipated constraints

I experienced various constraints during the process of carrying on the research. Some of these difficulties included accessing information from some websites which need subscription before gaining access to information posted on them, expenses in the research like transport and secretarial services.

CHAPTER FOUR

THE PUBLIC ORDER MANAGEMENT ACT AND ITS IMPACT ON PUBLIC GATHERINGS IN KAMPALA

4.1. Introduction.

It should be noted that in a democratic society, the maintenance of peace and order assumes paramount importance. So, drawing lessons from the events that transpired in the Northern part of Africa and in the Middle East, the Ugandan legislators were forced to debate on what was appropriate regarding the balance between what respect of and the exercise of individual rights and the need to maintain law and order to avoid the revolutionary wave that swept across those countries.

Drawing lessons from the above, public order management became contentious mostly in the context of political gatherings during the campaigns and in relation to other demonstrations such as the “Buganda Riots of 2009”, the Mabira Protests and the Walk to Work campaigns.

4.2. Definition of public order

Public order refers to the domain of police or other policing agencies, courts, prosecution services and prisons all of which make up the criminal justice system, and this is chain linked so all elements need to work together.

Public order is largely associated with the way people conduct themselves during public gatherings, demonstrations or processions that determines or qualifies the situation to be referred to as public order or disorder⁴¹.

The United States Institute of peace, in their Article, defined Public Order as a conditioned characterized by the absence of wide spread criminal and political violence, such as kidnapping, murder, riots, arson and intimidation against targeted groups or individuals.

The Indian Supreme Court defined Public order to mean the potentiality of an act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order.

⁴¹ Rose Mary Kemigisha, Public Order Management is more than riot control. JLOS Bulletin issue 002, 2011 at page 2.

Hence, bearing in mind that any disorder in community has the effect of disrupting the peaceful flow of business in that particular area, it goes without saying that Public Order and its effective management facilitates positive economic development as well as democracy.

It is this that the UPF bears at the back of their minds while handling and managing public gatherings.

4.3. Public order management.

Public order management has a duty at its centre, to ensure the balance between enjoyment of one's human rights and freedoms on the one hand, whilst also fulfilling one's duties and responsibilities on the other hand.

There are a number of pro-active measures which have been put in place in Uganda, especially in Kampala, to pre-empt public disorder, and consequently, every institution of government exists to proactively contribute to public order through its respective mandate and when carefully and effectively implemented, it creates a situation of public order.

Whereas a number of institutions have a collective mandate and responsibility to maintain public order, it is the UPF which directly handles gatherings and maintains law and order during these, and many persons have hitherto looked at the force as an instrument of suppression.

4.4. Freedom of peaceful assembly.

Freedom of peaceful assembly is a fundamental human right that can be enjoyed and exercised by individuals and groups, unregistered associations legal entities and corporate bodies. It has been recognized as one of the foundations of a functioning democracy. Facilitating participation in peaceful assemblies helps ensure that all people in a society have the opportunity to express opinions they hold in common with others⁴².

⁴² OSCE Guidelines on Freedom of Peaceful Assembly

The Constitution of the Republic of Uganda guarantees the freedom to “assemble and to demonstrate together with others peacefully and unarmed and to petition”.⁴³

The Public Order Management Act 2013 provides for the regulation of public meetings, which the Act defines as a “gathering, assembly, procession or demonstration in a public place or premises held for the purposes of discussing, acting upon, petitioning or expressing views on a matter of public interest”.⁴⁴

The Public Order Management Act codifies a notification system for public assemblies, binding upon the organizers of public meetings, in which they must notify an authorized officer of the intention to hold a public meeting, three to fifteen days ahead of time. Permission from the Ugandan state to organize a public meeting is not required. The police, *inter alia*, are required to “ensure fairness and equal treatment of all parties by giving consistent responses to organizers of public meetings”.⁴⁵

Section 8 of the Public Order Management Act grants the police wide ranging powers to stop or prevent a public meeting from taking place. These purported powers are inconsistent with international legal standards.⁴⁶

4.5. Provisions of the public order management act.

4.5.1 Notification period

Section 5⁴⁷mbly/gathering as three days. Such notification has to be in writing and in accordance to the prescribed forms, which specify the full name, physical address of the organizer, immediate contact details, proposed date and time of the meeting, venue, indication of consent of the owner of the venue, number of persons expected to attend, purpose of the gathering and any relevant information.

⁴³ The Constitution of the Republic of Uganda, 1995 (as amended)

⁴⁴Public Order Management Act, 2013, ss. 4 (1)

⁴⁵Public Order Management Act, 2013, ss. 9(2) (b)

⁴⁶Article 21 of the International Covenant on Civil and Political Rights sets out clearly the circumstances in which restrictions may be placed on the right to freedom of assembly. Article 21 states that, “No restrictions may be placed in the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

⁴⁷ The Public Order Management Act, 2013

Further, the same law⁴⁸ provides that where the form is not used, then written information will be accepted if it contains the same information that the form requires to reflect.

The Act makes it an offence to organize a meeting/gathering where the notification requirements have not been met; to wit, where the date, starting time, or route is different from that given in the notice to the Police. In the same vein, the Statute provides that holding an assembly without complying with the provisions of the Act is an act of disobedience of a statutory duty under **Section 116** of the Penal Code⁴⁹. Hence, the absence of such notification may be a ground for preventing an assembly/ gathering to occur, or even dispersing it.⁵⁰

Where the responsible authority fails to disperse the gathering which has been declared unlawful, then this will constitute an offence on the part of such an authority, that is, disobedience of lawful orders and any officer in breach of this provision is liable for imprisonment for two years.

In **Bukta and Others Versus Hungary**⁵¹, Court was of the opinion that the absence of notification should not be a basis for prohibiting or dispersing a peaceful assembly, since in a spate of circumstances, notification may not be practical and shouldn't be the basis for restricting the enjoyment of the right.

The same was emphasized by the United Nations Special Rapporteur on the rights to freedom of a peaceful assembly in the first and second thematic reports.⁵²

It was further stated that the requisite that organizers specify the purpose of a public meeting to the State is not legitimate, as this information does not assist law enforcement agents in making arrangement to facilitate the assemblies.⁵³ The Guidelines on Freedom of Assembly provide that prior notification should only be required where its purpose is to enable the state to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.⁵⁴ It should be a notice of intent rather than a request for permission. The period of notification should not be unnecessarily

⁴⁸ Ibid

⁴⁹ The Penal Code Act, Cap 120

⁵⁰ Section 8 (1) & (2) of the Public Order Management Act, 2013

⁵¹ Application No. 25691/04, 2007

⁵² A/HRC/23/39, Para.51

⁵³ United Nations Special Rapporteur on the rights to freedom of a peaceful assembly and association

⁵⁴ Paragraph 4.1

lengthy but should still allow adequate time for the relevant state authorities to make the necessary plans and preparations to satisfy their positive obligations.

Whereas the notification requirement would have been appropriate if it were for purposes of providing security to the participants, it has however remained unnecessarily burdensome and bureaucratic in itself, thereby rendering disproportionate, these restrictions on the right to freedom of assembly and association.

The notification requirement applies irrespective of the number of expected participants in the public meeting. However, where the number of participants is small, state facilitation will not be necessary and therefore the basis for requiring notification is absent. For instance in Moldova, any assembly of fewer than fifty persons can take place without prior notification and in the United Kingdom there is no requirement of notification for static assemblies at all⁵⁵.

4.5.2 Notification by authorized officer

Section 8⁵⁶ empowers an officer to notify the organizer of an assembly about the impossibility of holding a proposed gathering, for reasons provided for in the Act. The reasons are hereunder;

- That notice of another public meeting on the same date, at the same time and at the same venue has already been received by the authorized officer
- That the venue is considered unsuitable for the purposes of the crowd and traffic control or will interfere with other lawful business.

The authorized officer shall in writing within forty eight hours notify the organizer that it is not possible to hold the proposed public meeting⁵⁷. The organizer shall be invited to identify an alternative and acceptable venue or to reschedule the public meeting to another date or venue⁵⁸.

Prudent to note is that these grounds are quite broad and constitute superficial constraints on the power of law enforcement to refuse and assembly peacefully.

⁵⁵ Uganda; Public Order Management Act, October 2013. Article 19- Free Word Centre, 60 Farringdon Rd, London EC1R 3GA- www.article19.org

⁵⁶ The Public Order Management Act, 2013

⁵⁷ S.6 (1)

⁵⁸ S.6 (2)

Internationally, however, standards are clearly that notification procedures should be preferred over authorization based procedures.

4.5.3 Facilitation of Simultaneous assemblies and counter demonstrations

The Act establishes a discretionary power on the enforcement officers to prohibit simultaneous demonstrations in situations where such restrictions may serve no legitimate aim to the requirements of necessity and proportionality.

It is the obligation of the state to facilitate the rights to peaceful assembly of all persons, which necessarily requires simultaneous and counter demonstrations to be agreed where possible.⁵⁹

Where it is impossible, then alternatives should be agreed between assembly organizers and law enforcement agents through dialogue and on the basis of non-discrimination.⁶⁰

The possibility of a disturbance between opposed assemblies should not be the basis for denying the rights to freedom of peaceful assembly by itself, as public assemblies/gatherings always carry with them a degree of risk. In essence, less restrictive measures should be considered, such as deployment of additional law enforcement officers.

4.5.4 Spontaneous Assemblies

Section 7⁶¹ defines such assemblies to mean an unplanned, unscheduled or unintended meeting. It further provides that such meetings/gatherings are exempted from notification requirements.⁶²

Similarly, international standards require spontaneous meetings to be exempted from prior notification requirements, since the need of individuals to respond urgently and with a degree of spontaneity to trigger events must be an acceptable practice in a democratic society.

The OSCE Guidelines on Freedom of Peaceful Assembly provide that the law should explicitly provide for an exception from the requirement where giving advance notice is impracticable⁶³. The POMA however does not do this. It only gives a definition of a

⁵⁹ Article 21 of the ICCPR and Article 11 of the African Charter

⁶⁰ OSCE guidelines on peaceful Assembly, 2nd Ed. op. cit. para 122

⁶¹ The Public Order Management Act, 2013 s.7 (3)

⁶² Ibid s.7 (1)

⁶³ Paragraph 4.2

spontaneous public meeting. Authorities should always protect and facilitate any spontaneous assembly so long as it is peaceful in nature⁶⁴.

Where notification is provided for two or more unrelated assemblies at the same place and time, each should be facilitated as best as possible. The prohibition of a public assembly solely on the basis that it is due to take place at the same time and location as another public assembly will likely be a disproportionate response where both can be reasonably accommodated. The principle of non-discrimination requires, further, that assemblies in comparable circumstances do not face differential levels of restriction.⁶⁵ Notification requirements must therefore recognize the reality that in many instances, requiring notification is not political and states should therefore be generous in their interpretation of exemptions. Particularly the UN Special Rapporteur accentuated to UN general assembly in October 2013 that exemptions for spontaneous assemblies are especially important in the context of elections.⁶⁶ More so, Section 7 the Act⁶⁷ gives excessive discretionary powers to authorities to disperse spontaneous meetings.

4.5.5 Time restrictions on the gatherings

Section 7⁶⁸ requires organizers to notify authorities of the starting time and ending time for the gatherings, which should be between 7am and 7pm, with exception of Town Hall meetings. The organizers are also expected to ensure that the meeting is concluded within the stated period of time.

It should be noted that the effect of such a time limitation is a prohibition of assemblies and gatherings for those who work long hours during day time and also curtail the rights of those who wish to participate in sustained protests of an extended duration.

4.5.6 Venue restrictions on gatherings

Section 6 (1)⁶⁹ empowers law enforcement agencies such as Police to reject notification of an assembly on the basis of the proposed location. Similarly, **Section 7(2)**⁷⁰ empowers law

⁶⁴ Guidelines on Freedom of Assembly para 4.2

⁶⁵ OSCE guidelines on freedom of peaceful Assembly, 2nd Ed. Para 126. The OSCE guidelines cite decision 75/2008 (V.29) of the Hungarian Constitutional Court and the Bradford decision of the Federal Constitutional Court of German, BVerfGE 69, cited as examples of positive practice.

⁶⁶ Supra

⁶⁷ The Public Order Management Act, 2013

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Ibid

enforcement authorities to prevent or disperse an assembly on the basis of venue, in relation to spontaneous assemblies.

Pursuant to the 3rd Schedule to the Act⁷¹, **Section 13** provides restricted areas where entry is prohibited, the breach of which warrants a punishment of two years' imprisonment or a fine of 48 currency points.

4.5.7 Mandate to disperse gatherings

Section 8(1)⁷² gives power to an authorized officer, subject to the discretions of the IGP, to stop or prevent holding of a public meeting where the public meeting is held contrary to the act. **Section 8(2)**⁷³ gives powers to an authorized police officer to issue orders including an order for the dispersal of the public meeting. Such powers may be invoked in circumstances where the organizers have failed to meet the required standards of a gathering.

Section 9 (2) (f)⁷⁴ further entrenches the mandate of the Uganda Police Force to disperse defiant or unruly crowds or individuals at a public meeting in order to prevent violence, restore order and preserve peace.

However, the Act does not squarely establish a coherent legal framework for the use of force against assemblies with powers of law enforcement authorities fragmented across numerous ambiguous provisions that may be interpreted differently.

4.5.8 Organizers' responsibilities

Section 5 (c)⁷⁵ requires organizers to notify authorities of the starting time and ending time for the gatherings, which should be between 7am and 7pm, with exception of Town Hall meetings. The organizers are also expected to ensure that the public meeting is concluded peacefully by 7:00 p.m.⁷⁶

Organizers are required to inform all participants of the traffic or assembly plan and provide sufficient stewards proportionate to the number of participants in the public meeting who

⁷¹ *ibid*

⁷² *ibid*

⁷³ *ibid*

⁷⁴ *Ibid*

⁷⁵ *Ibid*

⁷⁶ *Ibid* section 10 (1) (e)

should be clearly identified with tags⁷⁷. They ought to coordinate and cooperate with the police to ensure that all participants are unarmed and peaceful⁷⁸.

Separately, the obligation of the organizers under the Act is to ensure that statements made to the media and the public do not conflict with any law⁷⁹ which serves no purpose other than to deter organizers and participants from speaking to the media.

Whereas an organizer should jointly be held liable for any disorder at a gathering, some responsibility should be shared with the participants and the Police who permitted the gathering.

The Act imposes on the participants an obligation to ensure that obstruction of traffic, confusion or disorder is avoided, failure of which such a participant will be liable, on conviction, to payment of 24 currency points or imprisonment of up to 12 months⁸⁰.

This section has been criticized because the responsibility to maintain public order and security is a function of the police. Organizers do not have the capacity to ensure that public meeting participants are unarmed. Also public meetings by their nature may be held with the intention of changing the laws of Uganda, this provision would therefore defeat its very purpose. Further, it is an undue restriction on the freedom of speech and thought; organizers cannot be held responsible for what each and any participant may say at a public meeting.

4.5 Duties of the police

The police shall be responsible for preserving law and order before, during and after a public meeting⁸¹.

The police must provide security for both the participants and other members of the public likely to be affected by the public meeting and ensure fairness and equal treatment of all parties by giving consistent responses to organizers of public meetings⁸².

The police must carry out risk assessment on all factors before the public meeting and notify the organizer accordingly⁸³.

⁷⁷ Ibid section 10 (1) (b)

⁷⁸ Ibid section 10 (1) (c)

⁷⁹ Ibid section 10 (1) (d)

⁸⁰ Ibid section 10 (2) and (3)

⁸¹ Ibid section 9 (1)

⁸² Ibid section 9 (2) (a) and (b)

⁸³ Ibid section 9 (2) (c)

It is the duty of the police to identify an appropriate traffic plan to allow the flow of both vehicle and human traffic and to direct traffic and the routes to and from the event to prevent obstruction of pedestrian or vehicle traffic or any other lawful business⁸⁴.

4.5.1. Applicable international human rights law

Uganda is state party to numerous international and regional human rights treaties, which prohibit torture, codify acceptable policing and security standards, and protect the rights to freedom of association and of peaceful assembly.

These include the **International Covenant on Civil and Political Rights (ICCPR)**, the **African Charter on Human and Peoples' Rights (ACHPR)**, the **Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment**. Uganda has signed, but not ratified, the **International Convention for the Protection of All Persons from Enforced Disappearance**.

The Universal Declaration of Human Rights gives everyone the right to freedom of peaceful assembly⁸⁵.

Freedom of association is guaranteed under **Article 22(1)**⁸⁶, which provides that:

“Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”

Article 21⁸⁷ guarantees the right to freedom of assembly. It provides that;

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

The **Charter of Fundamental Human Rights of the European Union** also provides for the right to peaceful assembly. It provides that;

⁸⁴ Ibid section 9 (d) and (e)

⁸⁵ Article 20 (1)

⁸⁶ International Covenant on Civil and Political Rights

⁸⁷ Ibid

“Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular political, trade union and civic matters...”⁸⁸”

Freedom of association and of peaceful assembly is also guaranteed under Articles 10 and 11 of the ACHPR⁸⁹.

Under international law, the freedom to take part in a peaceful assembly is of such importance that an unlawful but peaceful situation does not justify an infringement of freedom of assembly. In instances in which there are no acts of violence, public authorities should show tolerance toward peaceful gatherings for freedom of assembly to have real meaning.

Both the African Charter⁹⁰, and the ICCPR⁹¹ provide that no restrictions can be placed on freedom of assembly other than those imposed in conformity with the law and that are necessary in a democratic society in the interests of national security or public safety, the protection of public health or morals, or the protection of the rights and freedoms of others. Any general prohibition on political rallies taking place except during a very short period set by the authorities does not meet the necessary standards and is incompatible with freedom of assembly.

4.6. International standards regarding the public gatherings and their management

4.6.1 Introduction

Under international law, the freedom to take part in a peaceful assembly is of such importance that an unlawful but peaceful situation does not justify an infringement of freedom of assembly. In instances in which there are no acts of violence, public authorities should show tolerance toward peaceful gatherings for freedom of assembly to have real meaning.

⁸⁸ Article 12

⁸⁹ African Charter on Human and Peoples' Rights

⁹⁰ Article 11

⁹¹ Article 21

4.7. International policing standards and the management of public

4.7.1. Assemblies

In addition to the binding human rights obligations conferred under the ICCPR, the ACHPR and other similar treaties, a range of soft law and other guidance codifies human rights standards for policing peaceful assemblies. Inter alia, law enforcement officials are obliged to know, and to apply, international standards for human rights.⁹²

Governments including through their police officers and other law enforcement agencies must respect and protect the rights of freedom of association, movement, freedom from arbitrary arrest and detention and promote impartiality in the administration of law.

Under international law States have a positive obligation not only to actively protect peaceful assemblies, but to facilitate the exercise of the right to freedom of peaceful assembly.⁹³ The right to freedom of peaceful assembly is so important that the authorities should not break up peaceful assemblies even if they are unlawful.

Under the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officers, any use of force must be strictly necessary and proportional to the law enforcement objective.⁹⁴

In 2015, the ACHPR published a report on freedom of assembly and association in Africa, which stated, “States must fully respect in law and practice the right to freedom of expression through assembly. Discrimination among assemblies based on the content of the expression involved is illegitimate.”⁹⁵

Under international law, a requirement to give notification must not be such as to amount in practice to a requirement to obtain authorization. The purpose of notification requirements must be to allow the authorities to take reasonable and appropriate measures to guarantee the

⁹²Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 5/Add.3, Human Rights Standards and Practice for the Police, 2004.

⁹³Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, report to the Human Rights Council, A/HRC/20/27, para. 27.

⁹⁴UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officers, adopted September 1990, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx> “We come in and disperse them” Violations of the Right to Freedom of Assembly by the Ugandan Police Index: AFR 59/2983/2015 Amnesty International December 2015

⁹⁵African Commission on Human & Peoples’ Rights, Report of the Study Group on Freedom of Association and Assembly in Africa, 2015, p.62, <http://www.icnl.org/research/resources/ACHPR%20English%20REPORT%2021.05.2015.pdf> (accessed 15 October 2015).

smooth conduct of any assembly, meeting or other gathering, and while the authorities may use notification requirements to ensure protection of the rights of others or to prevent disorder or crime, they should not represent a hidden obstacle to the effective enjoyment of freedom of peaceful assembly.

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of association has explicitly stressed that no authorization should be required to assemble peacefully.⁹⁶ The exercise of the right to freedom of peaceful assembly should be governed at most by a regime of prior notification, which should not be burdensome, the rationale of which is to allow state authorities to facilitate the exercise of the right and take measures to ensure public safety and order and the rights and freedoms of others.⁹⁷

The Special Rapporteur has recommended that notice should be subject to a proportionality assessment, and should only be required for large assemblies or those where a certain degree of disruption is anticipated, with a recommended maximum notice requirement of, for example, **48 hours**.⁹⁸

4.7.2 Spontaneous assemblies

Spontaneous assemblies may sometimes take place as an immediate response to some triggering event, where the organizer, if there is one, is unable to meet the deadline for prior notification. The ability to hold them is important because delay would weaken the message to be expressed.

Spontaneous assemblies also occur with no identifiable organizer when a group of people gathers with no prior advertising or invitation, often as a result of commonly held knowledge about a particular event disseminated via the internet or other forms of instantaneous communication, or where a lone demonstrator is joined by others.

⁹⁶See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, 24 April 2013, para. 51.

⁹⁷Ibid. See also UN Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association A/HRC/20/27 para. 28 and recommendation at para. 90.

⁹⁸UN Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 28. See also A/HRC/23/39, 24 April 2013, paras. 51 and 52 “We come in and disperse them” Violations of the Right to Freedom of Assembly by the Ugandan Police

Even if the organizers have failed to notify the authorities, the assembly should not be dispersed automatically and the organizers should not be subject to criminal sanctions or to administrative sanctions resulting in fines or imprisonment, simply on this account

4.8. The Uganda Police Force

4.8.1 Uganda Police Force structure

The Uganda Police Force (UPF), under the jurisdiction of the Ministry of Internal Affairs, is the main security force responsible for law enforcement in Uganda⁹⁹.

In addition to "regular" police work, the UPF is also involved in carrying out paramilitary functions, providing security for visiting dignitaries and assisting public prosecutors during criminal proceedings¹⁰⁰

The UPF is headed by an Inspector General of Police (IGP)¹⁰¹. The IGP is appointed by the President on the Public Service Commission's recommendation and reports directly to the President and to the Minister of Internal Affairs¹⁰². A deputy inspector general of police (DIGP) reports to the IGP.

According to the UPF website, the police force is divided into five directorates: Administration, Operations, Criminal Investigations, Special Branch and Local Administration Police (LAP)¹⁰³

The Administration directorate is responsible for finances, resources (including human resources) and police medical services; the Operations directorate works in the area of crime prevention, "safety assurances" and incident responses; the Criminal Investigations Directorate (CID) is responsible for detecting, preventing and investigating crime, compiling information on criminals and gathering evidence for use in criminal prosecutions; the Special Branch collects, analyzes and disseminates information on security¹⁰⁴; and the Local Administration Police (LAP)¹⁰⁵, composed of locally recruited

⁹⁹US 11 Mar. 2008, Sec. 1.d

¹⁰⁰World Encyclopedia of Police Forces and Correctional Systems, 2006, 920.

¹⁰¹Uganda n.d.a; World Encyclopedia of Police Forces and Correctional Systems 2006, 920)

¹⁰²(ibid., 920-921)

¹⁰³ibid

¹⁰⁴(Uganda n.d.a)

¹⁰⁵(ibid. n.d.g; CHRI 2006, 15),

officers who have knowledge of local languages and customs is responsible for the enforcement of local bylaws and ordinances¹⁰⁶.

Each of the five directorates is commanded by an assistant inspector general of police (AIGP), who reports to the DIGP.

Other branches and units of the Uganda Police Force, include the Legal Department the Child and Family Protection Unit, which deals with human rights and gender-related issues; the Police Anti-Terrorism Unit, responsible for such activities as diffusing bombs, rescuing hostages and apprehending "terrorists"; the Mobile Police Patrol Unit (MPPU), which deals with border crimes, including smuggling; and the Special Force Unit, a paramilitary branch of the police trained in riot control and border patrol¹⁰⁷.

The World Encyclopedia of Police Forces and Correctional System also lists the following branches and units of the UPF: the Uniform Branch; the Special Constabulary; the Signals Branch; the Railway Police; the Police Air Wing; the Police Tracker Force; the Police Band; the Police Dog Section; and the Public Safety Unit.

Between 2006 and 2007, the Uganda Police Force reportedly expanded from approximately 27,000 to 48,000 police officers¹⁰⁸. According to official figures, the ratio of police officers to population in Uganda is approximately 1 officer per 1,880 inhabitants¹⁰⁹.

However, there are "significant" variations in the ratio of police officers to population by district, which according to one source, range from 1 officer per 100 inhabitants in the capital city of Kampala to 1 officer per 8,000 inhabitants in certain outlying districts¹¹⁰. There are approximately 6,780 LAP officers in Uganda. In 2007, Uganda was reportedly undergoing a restructuring of its police force¹¹¹.

¹⁰⁶(ibid.;Ugandan.d.a)

¹⁰⁷World Encyclopedia of Police Forces and Correctional Systems 2006, 921

¹⁰⁸Xinhua 1 July 2007

¹⁰⁹(ibid.;Ugandan.d.b.

¹¹⁰World Encyclopedia of Police Forces and Correctional Systems 2006, 920

¹¹¹Xinhua 1 July 2007

4.8.2 The role of Uganda Police Force in maintaining public order

The **Black's Law Dictionary**¹¹² defines Police to mean the governmental department charged with the preservation of public order, the promotion of public safety, and the preservation and detection of crime.

In **State Versus Hine**¹¹³, Court defined Police as a branch of the administrative machinery of government which is charged with the duty of preserving public order and tranquility, the promotion of public health, safety and morals, among other duties.

Article 212¹¹⁴ establishes the UPF therein provides for its functions as the protection of life and property, preservation of law and order, the detection and prevention of crimes and to cooperate with the civilian authority and other security organs established under the constitution and with the population generally.

Pursuant to **Sections 35-36**¹¹⁵, after a senior Police Officer has ordered the abatement of a public gathering and it continues, then any person but with the help of Police is authorized to take all actions necessary to disperse unlawful gatherings in gazetted places and apprehend participants.

This is because Officers of the UPF are regarded as the primary crime preventers and they take an oath to maintain sovereign peace and public order.¹¹⁶

The presumption that demonstrations will lead to the abuse of the rights of others, is often speculative but also an admission of failure on the part of the police to maintain law and order. While police presence in public demonstrations is necessary for the maintenance of law and order, it should be de-escalatory in that their conduct/presence should not incite violence rather; the people should feel safer in their presence¹¹⁷.

Nonetheless, in executing their roles as above mentioned, members of the UPF are guided by the Constitution of Uganda and other laws relevant, plus international human rights standards set by the prevalent Human Rights Instruments which Uganda has ratified. *What should be*

¹¹² Bryan A. Garner, *Black's Law Dictionary*, 9th Ed. P. 1276

¹¹³ 59 Conn. 50, 21 A.1024, 10 L.R.A 83

¹¹⁴ The Constitution of the Republic of Uganda (1995) as amended

¹¹⁵ The Police Act Cap. 303

¹¹⁶ An Article by Rose Mary Kemigisha, a Senior Human Rights Officer/Editor of the Uganda Human Rights Commission published by JLOS Bulletin issue 002, 2011 pp. 2,3 & 12

¹¹⁷ The JLOS Bulletin at page 14

borne in mind, however, is whether the UPF acts within the accepted confines of the law whilst executing their roles and duties in that respect.

4.8.3. Police powers

The powers of the police are derived from Sections 211-214 of Uganda's Constitution. The structure, organization and functions of the police are codified in the Police Act of 1994, as amended by the Police (Amendment) Act 2006. Inter alia, the police are constitutionally

Section 24 (1) of the Police Act 1994 codifies powers of "preventive arrest" in extremely narrowly prescribed circumstances. Under domestic law, preventive arrest, and subsequent detention, is only justified where a police officer has reasonable cause to believe it is necessary to prevent a person from causing physical injury to himself or herself or to any other person; from suffering physical injury; from causing loss or damage to property; from committing an offence against public decency in a public place; from causing unlawful obstruction on a highway; or from inflicting harm or undue suffering to a child or other vulnerable person.

4.9. The pre-2016 general elections period

Towards the 2016 general Elections, numerous public assemblies organized by opposition political parties were disrupted or prevented from taking place by the Uganda Police Force. The Public Order Management Act 2013 was routinely used as the justification, with organizers often being placed under "preventive arrest".

On 9 July, 2015 John Patrick Amama Mbabazi of the Go-Forward Party and former President of the Forum for Democratic Change (FDC) Kizza Besigye were separately arrested and prevented from participating in planned political events. Both were placed under "preventive arrest". Over the course of the following days, 14 youth activists were arrested and detained, including seven arrested at the conclusion of a peaceful press conference.

On 10 October, Kizza Besigye attempted to travel with a convoy of his political team to Rukungiri. The Uganda Police Force prevented the planned public assembly from taking place. Kizza Besigye, along with members of his entourage, was arrested and detained. On the same day, FDC activist Fatuma Zainab was arrested and undressed by three police

officers, prompting national outrage. On 15 October, Kizza Besigye was again arrested and placed under preventive arrest.

A number of events kept unfolding towards the day of the elections, which have since been considered as a suppression of the opposition by the UPF on behalf of the Ruling government.

4.10. Methods and equipment used

In the wake of increased public gatherings and the urge to fight for their rights at all costs, a number of persons have, many a time, participated in assemblies and gatherings. To disperse such gatherings, UPF uses a number of methods and equipment, for instance; Teargas, rubber bullets, live ammunition, amongst others, as discussed hereunder;

4.10.1 Teargas

In some instances at Kisekka market in downtown Kampala, police officers fired teargas canisters directly at individuals, turning the canisters into projectiles that caused injury, in addition to the harmful effects of teargas on the skin, eyes, and breathing.

“Ugandans have the right to gather and hear information, never more so than when an election is coming up. The reckless use of teargas is injuring people and jeopardizing a free and fair democratic atmosphere for campaigns.”¹¹⁸

As a riot-control method, teargas should be used only when necessary as a proportionate response to quell violence. It should not be used in a confined space, and canisters should not be fired directly at any individual, and never at close range. International guidelines, such as the United Nations Principles on the Use of Force and Firearms, stipulate that the police are expected to use discretion in crowd control tactics to ensure a proportionate response to any threat of violence, and to avoid exacerbating the situation.

The Ugandan Police Force should draw up guidelines on the use of teargas, Human Rights Watch said. The guidelines should be unambiguous that teargas may not be used simply because police deem a gathering unlawful, including when police believe organizers have

¹¹⁸Maria Burnett, senior Africa researcher at Human Rights Watch

failed to comply with the Public Order Management Act's requirements regarding police notification or permission.

Uganda's key development partners, such as the US, UK, the European Union, and Ireland – some of whom have directly supported public order management and community policing programs in recent years – should publicly support a call for guidelines on the use of teargas in compliance with international law. They should also publicly call for police to respect freedoms of assembly and expression throughout this critical campaign time.



People carry away a woman, who fainted after being overcome by teargas during riots, in downtown Kampala on April 29, 2011, a day after Uganda's opposition leader Kizwe Besigye was arrested four times that month.¹¹⁹

¹¹⁹© 2011 MARC HOFER/AFP/Getty Images <http://www.hrw.org/view-mode/modal/282308>

failed to comply with the Public Order Management Act's requirements regarding police notification or permission.

Uganda's key development partners, such as the US, UK, the European Union, and Ireland – some of whom have directly supported public order management and community policing programs in recent years – should publicly support a call for guidelines on the use of teargas in compliance with international law. They should also publicly call for police to respect freedoms of assembly and expression throughout this critical campaign time.



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4.10.2 Live ammunition

In 2009 and 2011, police used live ammunition to disperse people at several opposition gatherings, as well as at rallies and demonstrations against government actions, killing at least 49 bystanders and protesters.

Ugandan police use several justifications for forcibly dispersing people at opposition gatherings, citing violations of various laws as a basis to use teargas and unleash violence.

The Public Order Management Act (POMA), passed in August 2013, grants the Inspector General of Police wide discretion to permit or disallow public meetings. Opposition leadership argue that police routinely do not respond when they are notified or deny opposition requests to hold gatherings.

4.10.3 Coloured liquid

The force has at times used a colored liquid to disperse gatherings, which leaves a mark on the bodies of the participants. Some of them have often complained of skin irritations and other health effects.



Ugandan police fire teargas and water cannons to disperse opposition supporters who had gathered in a Kampala suburb on August 17, 2011 to mourn people killed during demonstrations.¹²⁰

¹²⁰© 2011 Reuters <http://www.hrw.org/view-mode/modal/282306>

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

This summary attempts to analyze the role of the UPF in implementing laws governing public gatherings, the case study being in Kampala for the period between 2010 and 2016. It covers the duties of the force, its roles as regards public assemblies/gatherings, the obligations of the participants, those of the organizers, and even the possible offences which may be committed by any of the foregoing parties to a public gathering.

All of the foregoing is done whilst bearing in mind pertinent provisions of both domestic law and international standards.

Article 38¹²¹ provides that every citizen has the right to participate in the affairs of government, to participate in peaceful activities and to influence the policies of government through civil organization.

Article 29¹²² guarantees the right to freedom of assembly and to demonstrate together with others, peacefully and unarmed, and to petition.

What should be borne in mind is **Article 1** of the same law¹²³, which inter alia provides that all power belongs to the people of Uganda and will be exercised in accordance to the Constitution of the Republic of Uganda (1995) as amended.

Further, **Article 43 (1) & (2)**¹²⁴ of the same law provides that no person shall prejudice the fundamental or other human rights and freedoms of others and that no restrictions may be placed on the exercise of this right beyond what is acceptable and demonstrably justifiable in a free and democratic society.

Pursuant to the foregoing provisions and to international standards of observance and respect of the right to participate in an assembly and gathering with others, it should be noted that this right is non-derogable.

¹²¹ The Constitution of the Republic of Uganda, 1995 (as amended)

¹²² Ibid

¹²³ Ibid

¹²⁴ Ibid

5.2. Recommendations

It is against the foregoing background that where I found loopholes, I make some recommendations which may aid in the jurisprudence of law in the area of public gatherings, or be an aid to the relevant authorities and persons as they implement laws governing Public gatherings. The same are hereunder;

5.2.1. Under elections

- a) Whenever Uganda enters an election period, it is essential that the Ugandan government and security forces such as the Uganda Police Force and other government institutions demonstrate a commitment to non-partisan application of rule of law and to zero commitment to partisan application of the laws governing Public gatherings in Kampala.
- b) This report calls on the Ugandan government to ensure that all Ugandans enjoy an equal right to freedom of peaceful assembly, along with the right to participate in the governance and political affairs of their own country. The Government of Uganda must allow all its citizens to engage in political rallies, listen to candidates, and freely express their views, regardless of their political affiliation. The report urges the Government of Uganda to issue guidelines on policing assemblies which meet international human rights standards.
- c) In effect, the police must perform their duty to maintain public order in a manner consistent with regional and international human rights standards.

5.2.2. To the Government of Uganda

- a) Publicly instruct the police not to use excessive force, including tear gas and rubber bullets, to disperse peaceful gatherings, including where the police believe that the organizers have not complied with the Public Order Management Act's requirement to notify the police in advance, together with other laws.
- b) Promptly, thoroughly and independently investigate all reports of human rights violations, including excessive use of force, arbitrary arrests and torture and prosecute those suspected to be responsible, including the commanding officers who gave unlawful orders or failed to prevent human rights violations.

- c) Ensure that those who commit human rights violations are held accountable and victims have access to an effective remedy and adequate reparation.
- d) Promptly appoint Commissioners to the Uganda Human Rights Commission to enable thorough, impartial investigations into all reported human rights violations.
- e) Extend a standing invitation to all thematic special procedures of the United Nations Human Rights Council.

Benjamin J. Odoki, the then Chief Justice of Uganda, stated that the rule of law demands that the state shall uphold the dignity of the person, act with compassion and restraint in dealing with people of different opinions for the sake of addressing issues affecting the common good of the citizenry¹²⁵.

5.2.3. To the Ministry of Internal Affairs

The Ministry is called upon to urgently issue guidance to the Uganda Police Force on the interpretation and application of the laws governing Public gatherings, especially the Public Order Management Act, 2013

Publish guidelines on police use of tear gas in conformity with international standards to ensure that tear gas should: -

- ✓ Never be used simply because the police consider a peaceful gathering unlawful, including where they believe that organizers have not complied with the relevant laws
- ✓ Only be used in a proportionate way and when necessary to contain violence;
- ✓ Never be used where there are older people or children who may have difficulty moving to avoid the tear gas
- ✓ Never be used in a confined space.
- ✓ Never be fired in canisters at close range and directly at any individual.

¹²⁵ The JLOS Bulletin Issue 002, 2011 Foreword.

5.2.4. To the Uganda Police Force

- a) Publicly guarantee that all Ugandan citizens will enjoy equally and fairly the constitutionally protected right to freedom of peaceful assembly, and commit to ensuring proportionate and non-partisan management of public gatherings
- b) Do not use excessive force, including tear gas, to disperse peaceful gatherings,

5.2.5. To the Parliament of Uganda

- a) Reform the Presidential Elections Act to precisely define consultations to enable the police to distinguish these from other public assemblies, and to enable presidential aspirants know how to regulate their conduct in line with the law.

5.2.6. To the UN special Rapporteur on the rights to freedom of peaceful

Assembly and of association

- a) Publicly express concern about the police's use of excessive force to disperse peaceful gatherings.
- b) Publicly express concern about the use of legislation, including the Public Order Management Act and the Presidential Elections Act, together with other relevant laws,
- c) To restrict the right to freedom of assembly.

5.2.7 To the African Commission on Human and Peoples' Rights

- a) Call on the Government of Uganda to fully and effectively respect the right to freedom of peaceful assembly and to ensure that peaceful rallies are not banned or dispersed.

5.3. Conclusion

There are a number of laws which are aimed at guiding participants and gatherings in general, in a bid to maintain public peace and order, the Public Order and Management Act, 2013 being the main one. These have in some instances come under scrutiny and attack from persons who are of the opinion that the Ugandan government is aimed at suppressing the opposition gatherings

Pursuant to the foregoing and to the discussions made herein, it is imperative to note the Uganda Police Force is at the forefront of implementing laws governing public gatherings in Uganda and Kampala is no exception to this. However, other stakeholders also play a role, but the force is normally the one which is hands on with public gatherings.

The rule of law requires those who want to use public order means to be mindful of the rights of others, to preserve peace and harmony and to respect the bill of rights in its entirety¹²⁶

Prudent to note is the fact that criminals have at times used public gatherings to commit crimes such as theft and at times more heinous crimes such as murder as witnessed in the 2010 Kyaddondo and Ethiopian Village bomb attacks by the Al-Shabaab Militia.

Inasmuch as the force has met some shortfalls, the officers have tried to do their best in implementing laws governing public gatherings, as many a time we have witnessed heavy deployment at gatherings. Consequently, this has reduced the rates of crime at such gatherings.

However, what actually comes into contention are the methods employed by the force in executing their aforementioned role. Brutality and selective application of the laws has been continuously used by the force, thereby making it to be regarded as a Government Instrument for suppressing the opposition.

In the wake of all this, the right to freedom of assembly remains a non derogable human right in Uganda and specifically Kampala, the same of which is enshrined in the Constitution of the Republic of Uganda (1995) as amended and shouldn't be interfered with unlawfully.

¹²⁶ Then Chief Justice Benjamin J. Odoki, The JLOS Bulletin Issue 002, 2011.

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