

Practical Guide

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# ZIMBABWE'S MAINTENANCE OF PEACE AND ORDER ACT [CHAPTER 11:23]

Ensuring Compliance by Organizers of Assemblies



**ICNL**

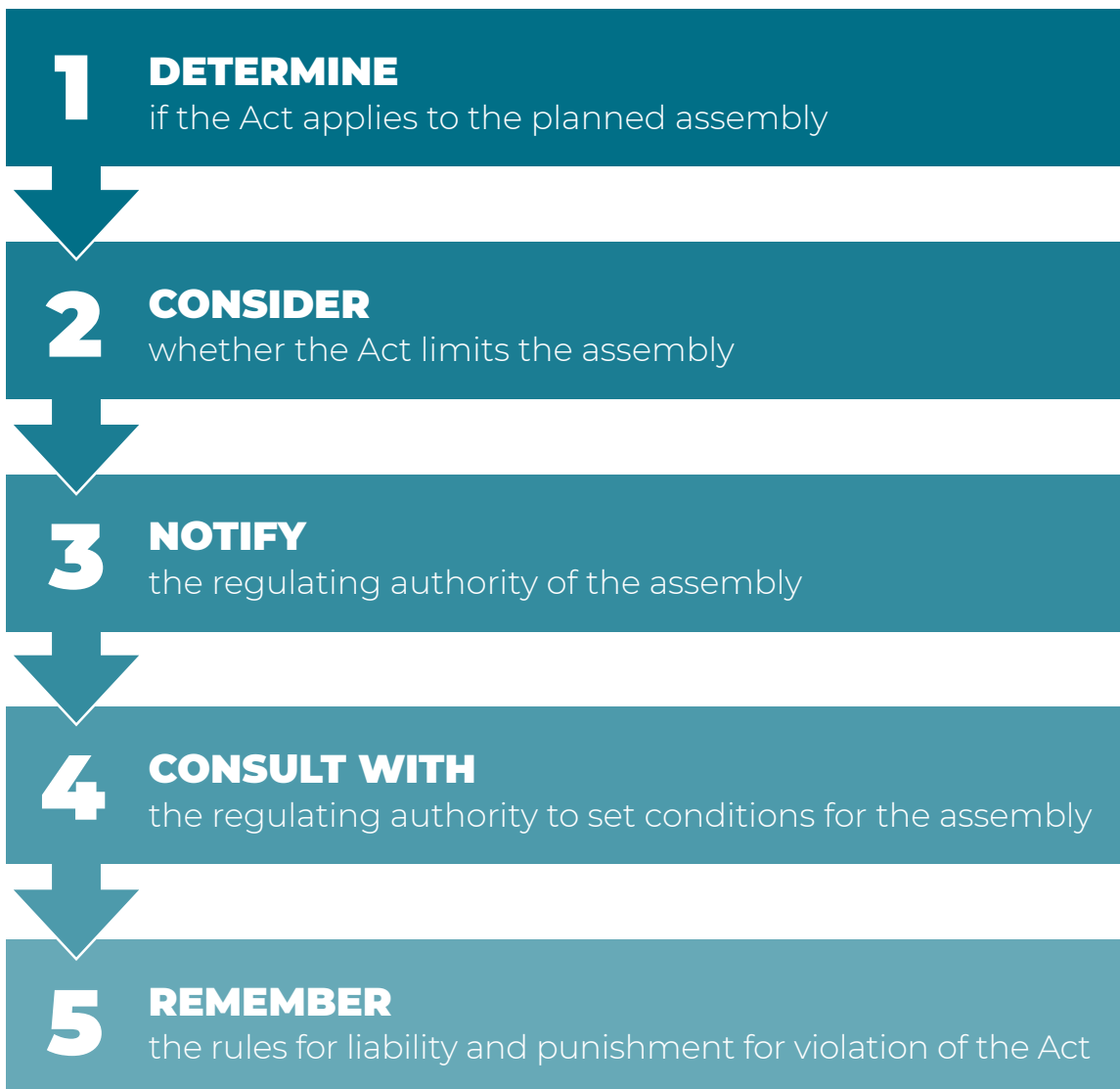
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# INTRODUCTION

On November 15, 2019, the Maintenance of Peace and Order Act (the Act), which repeals and replaces the Public Order and Security Act of 2002 [*Chapter 11:17*] (POSA) went into effect. The Act governs gatherings, processions and public demonstrations and thus impacts the freedoms of assembly and expression in Zimbabwe.

This Practical Guide highlights key steps and considerations for organizers (or “conveners”) of assemblies.\*

## OVERVIEW: KEY STEPS INVOLVED IN ORGANIZING AN ASSEMBLY



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# 1

## DETERMINE

if the Act applies to the planned assembly

Two types of assemblies are covered by the Act:

- a. processions and public demonstrations
- b. public meetings\*

\*A “public meeting” is a gathering of more than 15 persons or a meeting which the public or a portion of the public is permitted to attend. A meeting that is held in a private place or in a public place that is not wholly in the open is not a “public meeting.”

These assemblies do not have to follow the Act:<sup>1</sup>

- a. Gatherings held exclusively for bona fide religious, educational, recreational, sporting or charitable purposes
- b. Gatherings held exclusively for a baptism, wedding, funeral, or cremation
- c. Non-political gatherings for members of professional, vocational or occupational bodies
- d. Agricultural shows
- e. Bona fide theatrical, cinematographic or musical entertainment or circus or fireworks displays
- f. Bona fide sale of goods or animals
- g. A lottery held under the Lotteries and Gaming Act
- h. A luncheon, dinner, or dance held by a non-political club, association or organization
- i. Non-political public gatherings held by any non-political club, association, or organization
- j. Gatherings held by a registered trade union for bona fide trade union purposes under the Labour Act
- k. Gatherings held to form any non-political club, association, or organization
- l. Gatherings for the purposes of an industrial show
- m. Meetings of traditional leaders with their subjects

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<sup>1</sup> Schedule

# 2

## CONSIDER

### whether the Act limits the assembly

The Act limits assemblies in certain places and also restricts the manner of conducting assemblies. Consider these limitations when planning your assembly.

#### Prohibition of any gatherings in the vicinity of Parliament, courts and protected places

##### PROHIBITED ACTIVITY:

Gatherings within a certain distance of Parliament, courts, and protected places are prohibited.<sup>2</sup> These include gatherings:

- a. within 20 meters of Parliament
- b. within 100 meters of any court
- c. within 100 meters of a protected place.\*

\*The Minister of Home Affairs and Cultural Heritage can declare any premises to be a “protected place” under the Protected Areas and Places Act [*Chapter 11:12*] if (s)he believes special precautions are necessary or expedient to prevent unauthorized entry or to protect the premises from unlawful damage or sabotage. The Minister can make such a declaration during a public emergency, or when (s)he considers the declaration necessary “in the interests of defence, public safety, or public order.”

##### EXCEPTION:

A gathering may occur in the places noted above if the convener notifies the relevant authority (e.g. Speaker of the National Assembly, the Chief Justice, the Judge President) and the authority grants written permission for the gathering to take place.<sup>3</sup>

#### Prohibition of possession of certain weapons

##### PROHIBITED ACTIVITY:

The regulating authority (the police officer in command of the police district in which the assembly will take place) may temporarily prohibit the carrying or display of certain weapons if the authority deems that such weapons are likely to cause public disorder or breach of the peace.<sup>4</sup>

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<sup>2</sup> Article 10

<sup>3</sup> Article 10(2)

<sup>4</sup> Article 4(1)

#### NOTIFICATION METHOD:

The regulating authority must issue the prohibition through at least one of the following methods for it to have effect:

- a. in a newspaper circulating in the area to which the prohibition applies;
- b. by notices distributed among the public or posted on public buildings in the area to which the prohibition applies; or
- c. by a police officer through broadcast or made orally; or
- d. by communication through the traditional leadership in the area where the prohibition is to take effect.<sup>5</sup>

#### TIME PERIOD:

The prohibition may be for a maximum of three months. Once the prohibition expires, the regulating authority cannot renew it except by showing good cause on oath to a Magistrate.<sup>6</sup>

#### OPPORTUNITY TO APPEAL:

A person can appeal the prohibition to the Minister of Home Affairs and Cultural Heritage, who can modify or set it aside.<sup>7</sup>

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5 Article 4(2)

6 Article 4(1)

7 Article 4(3)

# 3

## NOTIFY

### the regulating authority of the assembly

Once the organizer has decided to proceed with an assembly that is covered by the Act, (s)he must notify the regulating authority of the assembly.

Here are the notification requirements for processions/public demonstrations and public meetings, respectively:

ACTION	PROCESSION OR PUBLIC DEMONSTRATION	PUBLIC MEETING
<b>Appoint the following figures:</b>	<ul style="list-style-type: none"> <li>A “convener” (i.e. the organizer of the assembly; the person who is responsible for the arrangements for the procession or public demonstration)</li> <li>A “deputy convener” (i.e. the organizer who is second-in-command)</li> </ul>	
<b>Include the following information in your notification:</b>	<ul style="list-style-type: none"> <li>The chosen convener’s and deputy convener’s names and addresses;</li> <li>The name, address and telephone or cellphone and e-mail, if any, of the convener and deputy;</li> <li>The name of the organization on whose behalf the gathering is convened, or if it is not convened by an organization, a statement that it is convened by the individual convener;</li> <li>The purpose of the gathering;</li> <li>The time, duration and date of the gathering;</li> <li>The place where the gathering is to be held;</li> <li>The anticipated number of participants;</li> <li>The proposed number and, where possible, the names of the marshals who will be appointed by the convener, and how the marshals will be distinguished from the other participants in the gathering;</li> </ul>	N/A
<b>Any other notification obligations?</b>	<ul style="list-style-type: none"> <li>The convener must notify the police officer in case of a delay or cancellation of the assembly.</li> </ul>	

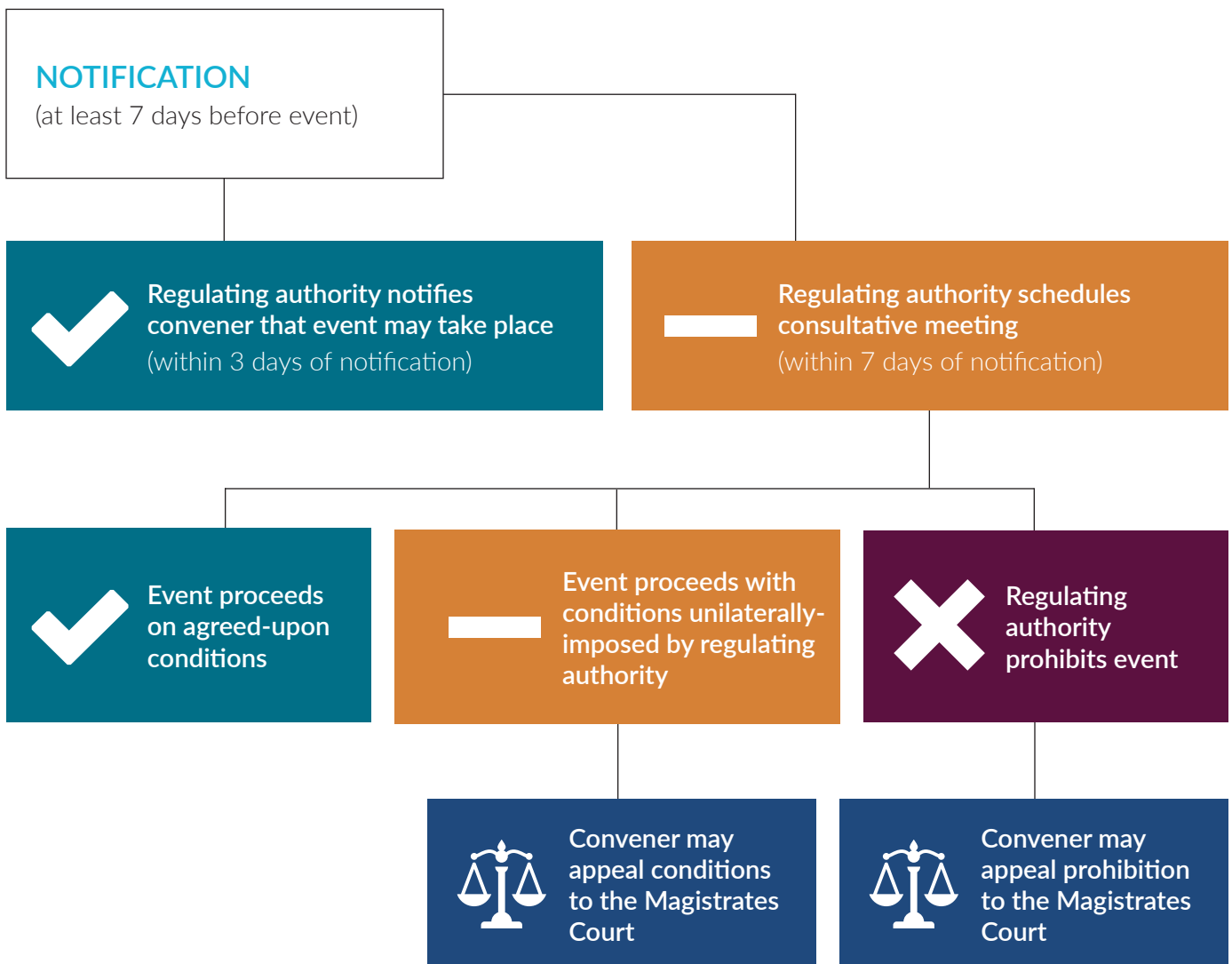
# 4

## CONSULT WITH

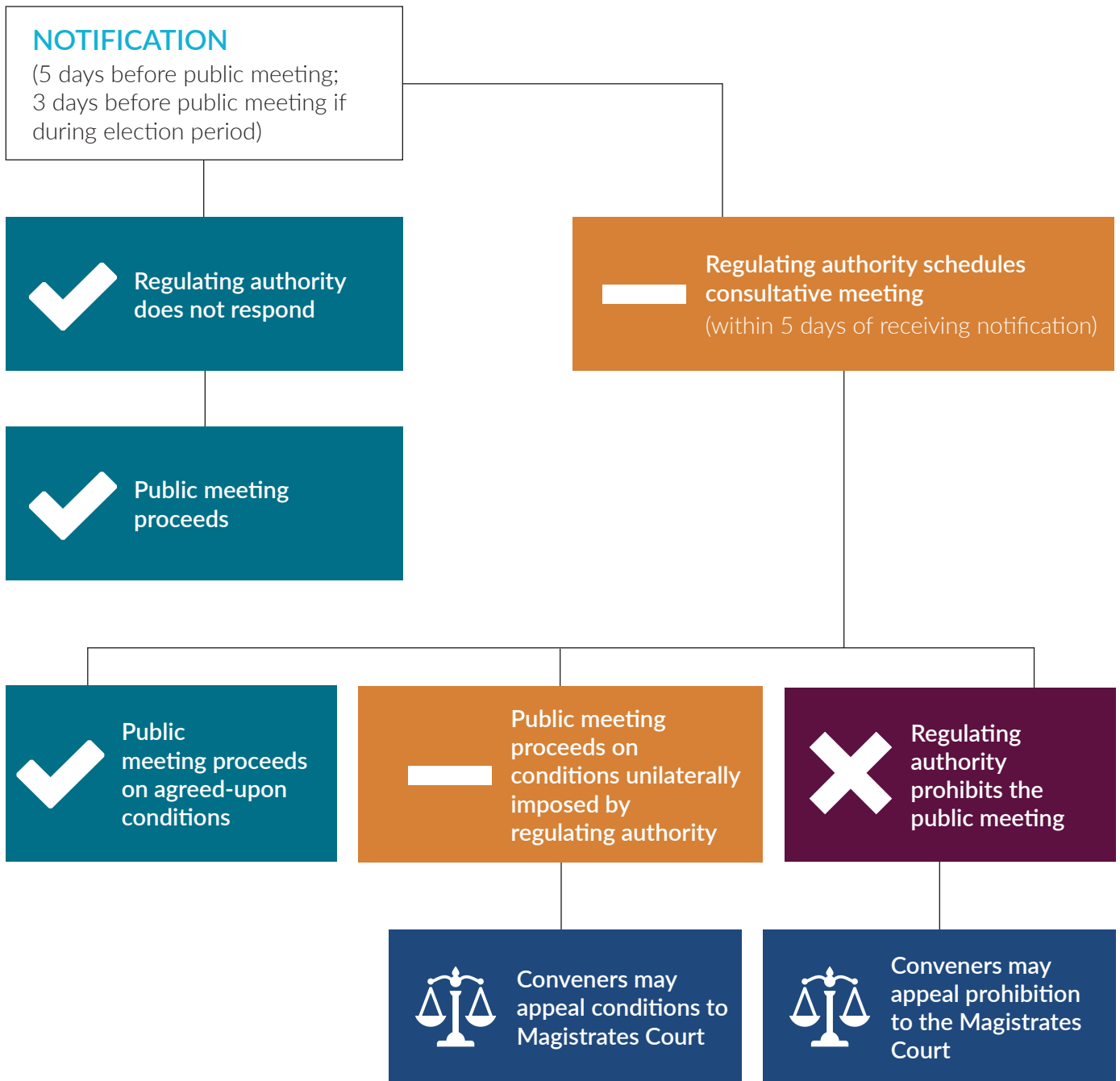
the regulating authority  
to set conditions  
for the assembly

The consultation process differs between processions/public demonstrations and public meetings.

### Processions and Public Demonstrations



# Public Meetings





# 5

## REMEMBER

the rules for liability and punishment for violation of the Act

### Liability of Conveners<sup>8</sup>

#### IF THE CONVENER:

- did not issue proper notice of the holding of the gathering

#### OR

- failed or refused to comply with any conditions of the notice

#### THEN THE CONVENER IS LIABLE FOR

- any loss of or damage to property
- any injury to or death of a person that arises from public disorder or breach of peace caused by the gathering.

NOTE: Other laws that hold a person liable for any loss, damage, injury, or death caused by or arising out of or occurring at a gathering still apply.<sup>9</sup>

### Punishments

For any violations of the Act or of certain parts of the Criminal Code,<sup>10</sup> the following punishments may be imposed:

- A **Magistrates' Court** has special jurisdiction to impose a fine up to level 8 (currently ZWL\$14,400) or imprisonment up to 3 years.
- A **Senior or Provincial Magistrates' Court** can impose a fine up to level 12 (currently ZWL\$36,000) or imprisonment up to 10 years.
- A **Regional Magistrates' Court** can impose a fine up to level 14 (currently ZWL\$120,000) or imprisonment up to 20 years.

<sup>8</sup> Article 12

<sup>9</sup> Article 12(4)

<sup>10</sup> i.e. Chapter III ("Crimes Against the State"); Chapter IV ("Crimes Against Public Order"); Section 176 ("Assaulting or resisting peace officer"); and Section 177 ("Undermining of police authority").

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