



The Operating Space of Civil Society Organisations in Zimbabwe: A Critical Analysis of the Proposed Regulation of Civil Society





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Introduction and background

Civil society organisations play a critical role in all sectors of Zimbabwean society, including health, the arts, media, governance, human rights, democracy, gender, and providing charitable support to the vulnerable. They complement the state in the development and social welfare sectors, and their independent watchdog role is central to the promotion of a well-functioning democracy. Unfortunately, the promotion of civic education, accountability and social change, is often perceived to pose a threat to the political status quo, resulting in attempts by the state to restrict civic space.

On 5 November 2021, the government gazetted the Private Voluntary Organisations Amendment Bill, 2021 (PVO Bill) which, if enacted into law, will result in gross over-regulation and interference in the internal affairs of civil society organisations in Zimbabwe, and will subject them to criminalisation on such vague grounds as supporting or opposing a political party or

candidate. The gazetting of the Bill comes at a critical turning point in Zimbabwe. Ahead of the 2023 harmonised elections, it is feared that the state may choose to revert to repressive police and military tactics, such as those deployed against citizens and organisations perceived as dissenters in the early 1980s and in the 2000s. On the other hand, there is a possibility, that the state may choose to abandon the Bill and adopt a more progressive, collaborative and human rights friendly approach to civil society, in line with its re-engagement agenda.

The current trends in 2021 unfortunately indicate a worrying turn towards increased authoritarianism. For example: the recent attempt by the authorities to impose a directive specifying that non-governmental organisation (NGOs) that had not entered into Memorandums of Understanding, and had not submitted work plans and budgets, would be closed down by law enforcement; and chilling statements by state spokespersons and ministers

directed at NGOs critical of the government, warning them that they will “be dealt with”. Concerningly, the repressive PVO Bill is seemingly being fast-tracked over the Christmas period, indicating a resolute agenda by the current government to pass it into law.

Against this backdrop, it is critical that the operating space of civil society organisations be defended at all costs. This analysis provides an overview of the already restrictive legislative framework currently regulating the non-profit sector, highlights how the incoming proposed reforms will further restrict its operating space, and provides recommendations to create a more enabling operating space.

History of threats to Civil Society Organisations (CSOs)¹

Zimbabwe has a very active civil society that has banded together since the early 2000s to challenge an increasingly authoritarian regime, that has been characterised by constitutional and other legislative amendments, policies and practices restricting human rights and freedoms. In turn, the Zimbabwean state has responded to the challenges from civil society by intermittently cracking down on NGOs, especially those working on civil and political rights and those receiving foreign

funding for human rights and governance programmes.

These crackdowns have particularly occurred during periods of “increased political activity”, such as pre-election periods, and periods when there is “greater demand for humanitarian services”² State interference with regards to the operation of NGOs has taken the form of repeated requests for information, threatened suspension of NGO activities, raids of NGO offices, and arrests of staff members.

The period from 2002–2008 was a particularly tense period for non-government organisations in Zimbabwe, when there was mounting opposition to the ruling ZANU PF party, and prior to the formation of the Government of National Unity in 2009.

In 2002, there were numerous direct and indirect threats against NGOs. Patrick Chinamasa, the then Minister of Justice, Legal and Parliamentary Affairs, published a list of NGOs which he claimed were a threat to peace and security in Zimbabwe in November 2002.³ However, the fact-finding mission to Zimbabwe in 2002 by the African Commission on Human and Peoples’ Rights (ACHPR) determined at the time that the government of Zimbabwe was treating NGOs with hostility, and interfering with

1 This overview has been guided by various papers prepared by Zimbabwe Lawyers for Human Rights, including: A Tsunga and T Mugabe “Zim NGO Bill: dangerous for human rights defenders: Betrays High Degree of Gvt Paranoia and Contempt For the Regional and International Community” *Zimbabwe Lawyers for Human Rights (ZLHR)* (28 July 2004) available at: http://archive.kubatana.net/html/archive/hr/040728zlhrr.asp?spec_code=040909ngokubind§or=LEGISL&year=2004&range_start=61&intMainYear=2004&intTodayYear=2021; “Information relating to the legal status of the notice issued by NTGoche (MP)” *Zimbabwe Lawyers for Human Rights (ZLHR)* (6 June 2008). Available at: http://archive.kubatana.net/html/archive/hr/080606zlhrr.asp?sector=DEMG&year=0&range_start=1; O Saki (Programmes Coordinator, ZLHR) “Zimbabwe, Sub-Saharan Africa Country Reports” *The International Journal of Not-for-Profit Law* (2010) 12(2), available at: https://www.icnl.org/resources/research/ijnl/zimbabwe#_ftnref40.

2 Visit to Zimbabwe: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (22 May 2020) A/HRC/44/50/Add.2 para.95 available at: <https://undocs.org/en/A/HRC/44/50/Add.2>.

3 O Saki (Programmes Coordinator, ZLHR) “Zimbabwe, Sub-Saharan Africa Country Reports” *The International Journal of Not-for-Profit Law* (2010) 12(2) February 2010 available at: https://www.icnl.org/resources/research/ijnl/zimbabwe#_ftnref40.

their activities⁴.

In 2003, the Government introduced a *Policy on Operations of Non-Governmental Organisations in Humanitarian and Development Assistance in Zimbabwe Policy* (30 July 2003) (the 2003 NGO Policy), which directed that, “[e]very NGO that would like to operate at any level in the provision of humanitarian and developmental assistance in the country should be duly registered with the Ministry of Public Service, Labour and Social Welfare” and that, “[i]n order to commence operations at any level, an NGO should sign a Memorandum of Understanding with the respective Government ministry/agency”, among other cumbersome administrative requirements.⁵ This Policy has been used since that time to restrict NGOs’ operations, particularly in terms of accessing more remote rural areas of the country.

In 2004, the Government also developed the Non-Governmental Organisations Bill, HB 13, 2004, (the NGO Bill) that would have required all human rights NGOs to register in terms of the Act; would have allowed for excessive executive control over NGOs; and would have prohibited foreign funding for activities involving or including the promotion and protection of human rights and political governance.⁶ The Parliament of Zimbabwe aimed to pass the Act just before the 2005 parliamentary elections. The Bill

was passed by both Houses of Parliament. It was fortunately abandoned by the President at the eleventh hour: he declined to assent to the Bill after the reported intervention of a Catholic priest. It is believed that information about the damage that the Bill would do to humanitarian and service delivery persuaded him not to assent.

In February 2005, the state announced that it was considering suspending the registrations of about 30 NGOs over suspected misuse of funding from international donors. The government stated that an inter-ministerial team that included members of the Central Intelligence Organisation, were probing into the activities of local and foreign NGOs operating in the country. The teams conducted visits to over 15 NGOs in April 2005, however no further steps were taken and the results of the probe, if any, were not made public.⁷

In June 2008, the Government issued a notice directing a blanket suspension of the field operations of all NGOs involved in humanitarian operations, purportedly in terms of the PVO Act.⁸ The suspension was initiated to allow “for fair and transparent investigations” into allegations that PVOs/NGOs were breaching conditions of their registration by engaging in political activities.⁹ During this period, no NGOs were formally investigated or closed down,

4 African Commission for Human and People’s Rights *Zimbabwe: Fact-Finding Mission*, 2002 at <https://www.achpr.org/states/misreport?id=51>.

5 *Policy on Operations of Non-Governmental Organisations in Humanitarian and Development Assistance in Zimbabwe* (30 July 2003) at: <https://reliefweb.int/report/zimbabwe/policy-operations-non-governmental-organisations-humanitarian-and-development>.

6 A Tsunga and T Mugabe, “Zim NGO Bill: dangerous for human rights defenders: Betrays High Degree of Gvt Paranoia and Contempt For the Regional and International Community” *Zimbabwe Lawyers for Human Rights (ZLHR)* (28 July 2004) available at: http://archive.kubatana.net/html/archive/hr/040728zlh.asp?spec_code=040909ngokubind§or=LEGISL&year=2004&range_start=61&intMainYear=2004&intTodayYear=2021.

7 “Govt confirms probe into NGO activities, funding” *The New Humanitarian* (2 May 2005) available at: <https://www.thenewhumanitarian.org/fr/node/221743>.

8 “Information relating to the legal status of the notice issued by NTGoche (MP)” *Zimbabwe Lawyers for Human Rights (ZLHR)* (6 June 2008) available at: http://archive.kubatana.net/html/archive/hr/080606zlh.asp?sector=DEMG&year=0&range_start=1.

9 “Government gives “clarification” on suspension of NGOs” *National Association of Non-Governmental Organisations in*

but some organisations were raided by police officers and asked to provide details of their board members or show proof of registration.¹⁰

Post November 2017 threats to operations of CSOs

Following the overthrow from power of former president Robert Mugabe and his administration in November 2017, there were hopes that the “New Dispensation” would show greater commitment to human rights, and would improve relations with civil society. Unfortunately, the current government under president Mnangagwa, is increasingly cracking down on NGOs, particularly in the build-up to the 2023 elections, raising grave concerns of a return to the 2002–2008 trends highlighted above.

On 19 January 2018, Zimbabwe’s Ministry of Labour and Social Welfare issued a notice, by way of an advertisement in a local state-controlled newspaper (*The Herald*), calling on private voluntary organisations (PVOs) to submit their 2017 returns. The notice also advised organisations described as “operating outside the law” to regularise their operations by approaching the nearest Social Welfare Offices to register as PVOs. The notice also warned that “many organisations are registering as Trusts but

operating as PVOs. This anomaly need [sic] to be regularized”.¹¹

In 2019, the District Administrator of Masvingo purported to suspend the activities of the Community Tolerance Reconciliation and Development Trust (COTRAD) alleging that they ought to have registered under the Private Voluntary Organisations Act. The High Court declared the purported suspension as null and void, on the basis that COTRAD was registered as a trust and not as a Private Voluntary Organisation (discussed in more detail below).¹²

During a national stay-away protest against fuel hikes in January 2019, the police and security sector conducted gross atrocities and dragnet arrests against thousands of citizens.¹³ Many civil society organisations, including medical and legal organisations, provided assistance to victims, and lawyers marched to protest against fast-tracked trials. Speaking against the doctors and lawyers who offered their services, President Mnangagwa made a chilling statement that, “We are now going after those doctors who were involved in those activities ... [and] [t]hose lawyers that were inciting violence, we are now going after them”.¹⁴

Civil society organisations and human rights defenders have also increasingly been

Zimbabwe (NANGO) (13 June 2008) available at: http://archive.kubatana.net/html/archive/cact/080613nango.asp?orgcode=ZIM007&year=2008&range_start=1.

¹⁰ Saki (n 3 above).

¹¹ “An Assessment Of CSOs Operating Environment In Zimbabwe Post-November 2017” *Zimbabwe Lawyers for Human Rights* (12 September 2019) available at: <https://kubatana.net/2019/09/12/an-assessment-of-csos-operating-environment-in-zimbabwe-post-november-2017/>.

¹² *Community Tolerance and Development Trust and 4 Others v District Administrator, Masvingo and Minister of Local Government, Public Works and National Housing* High Court unreported case HC 2152/19; “Zim Court Overturns NGO Ban” *Zimbabwe Lawyers for Human Rights* (ZLHR) (20 March 2019) available at: <https://www.zlhr.org.zw/?p=1692>.

¹³ “On the days of darkness in Zimbabwe. An updated report on the human rights violations committed between 14 January 2019 to 5 February 2019” *Zimbabwe Human Rights NGO Forum* (2019). Available at: <http://kubatana.net/2019/02/07/on-the-days-of-darkness-in-zimbabwe-an-updated-report-on-the-human-rights-violations-committed-between-14-january-2019-to-5-february-2019/>.

¹⁴ “Emmerson Mnangagwa issues threat to Zimbabwe’s doctors and lawyers” *Times Live* (17 February 2019) available at: <https://www.timeslive.co.za/news/africa/2019-02-17-emmerson-mnangagwa-issues-threat-to-zimbabwes-doctors-and-lawyers/>.

subjected to attacks by state spokespersons and ZANU PF supporters on social media. The state has subjected human rights defenders to arrests for social media posts critical of the government, in violation of their rights to freedom of expression.¹⁵ Human rights groups such as the Media Institute of Southern Africa and Citizen Lab,¹⁶ have raised concerns of an increase in state surveillance using increasingly repressive legislation and spyware, in violation of citizens' right to freedom of expression.¹⁷

In June 2021, CSOs in Zimbabwe received various directives from Provincial Development Co-ordinators (PDCs) in Masvingo, Harare, Matebeleland North and Manicaland Provinces, that: NGOs must not operate outside of their mandates; NGO operations must be cleared by the offices of the PDC; directors of NGOs must make courtesy calls with their respective PDCs; and NGOs must submit documentation including annual work plans, information on workshops, commissioning of projects, monthly reports and any other pertinent information, by 9 July 2021.¹⁸

On 29 July 2021, the PDC of Harare Metropolitan province issued a press statement that all NGOs that had not submitted their credentials, as directed, to the PDC, "shall with immediate effect be stopped by law enforcement from conducting any operations what so ever until they fully comply with the [2003] policy. In particular obtaining a resolution from the Provincial Development Committee and recognition by the Minister of State for Provincial Affairs and Devolution".¹⁹ ZLHR, representing the Zimbabwe Human Rights NGO Forum (the Forum) and Crisis in Zimbabwe Coalition (CiZC), challenged the directive in court, and obtained an order suspending the operation of this unlawful directive.²⁰

NGOs have also increasingly been subjected to public threats by state officials that they will shut down NGOs "straying from their mandates", and to accusations of NGOs being funded by foreign states to undermine the independence of the judiciary and legitimacy of the government.²¹ The Minister of Justice Ziyambi Ziyambi issued a statement on 16 May 2021 that NGOs,

15 "SALC Statement On The Attack On Freedom Of Expression In Zimbabwe" SALC (21 Jan 2021) available at: <https://www.southernafricalitigationcentre.org/2021/01/21/news-release-salc-statement-on-the-attack-on-freedom-of-expression-in-zimbabwe/>.

16 B Marczak, J Scott-Railton, S Prakash Rao, S Anstis and R Deibert "Running in Circles: Uncovering the Clients of Cyberespionage Firm Circles" *Citizen Lab* (1 December 2020) available at: <https://citizenlab.ca/2020/12/running-in-circles-uncovering-the-clients-of-cyberespionage-firm-circles/>.

17 K Majama "Digital Rights Feature Prominently At African Commission On Human And Peoples' Rights 68th Session", *African Declaration on Internet Rights and Freedoms* (20 May 2021) available at: <https://africaninternetrights.org/en/updates/digital-rights-feature-prominently-african-commission-human-and-peoples%E2%80%99-rights-68th-session>.

18 "Harare PDC, Tafadzwa Muguti, Cracks Whip On NGOs" *Africa Press* (30 June 2021) available at: <https://www.africa-press.net/zimbabwe/all-news/harare-pdc-tafadzwa-muguti-cracks-whip-on-ngos>.

19 "Muguti Bans NGOs That Refuse To Report To Him" *ZimEye* (30 July 2021) available at: <https://www.zimeye.net/2021/07/30/muguti-bans-ngos-that-refuse-to-report-to-him/>; "Govt Bans Ngos For Failing To Comply With Directive" *The Zimbabwe Star* (29 July 2021) available at: <https://zimstarnews.co.zw/govt-bans-ngos-for-failing-to-comply-with-directive/>.

20 *Zimbabwe Human Rights NGO Forum & Crisis in Zimbabwe Coalition Trust v Provincial Development Coordinator of Harare Metropolitan Province, Minister of State for Provincial Affairs and Devolution of Harare Metropolitan Province, Minister of Local Government and Public Works, Minister of Home Affairs and Cultural Heritage & Minister of Public Service Labour and Social Welfare* (17 September 2021) Harare High Court unreported case HC 4113/21.

M Taruvinga, "High Court Reverses Govt's Threats To Shutdown NGOs" *New Zimbabwe* (18 September 2021) available at: <https://www.newzimbabwe.com/high-court-reverses-govts-threats-to-shutdown-ngos/>.

21 Idah Mhetu, "Zimbabwe: Mnangagwa Threatens to Deregister Meddlesome NGOs, Confirms Fresh Lockdown Plans" *All Africa* (10 July 2020) at: <https://allafrica.com/stories/202007110171.html>; "Mnangagwa Plots Total Control Of NGOs", *New Zimbabwe* (23 October 2020) at: <https://www.newzimbabwe.com/mnangagwa-plots-total-control-of-ngos/>; Veneranda Langa "Mnangagwa Threatens to Crack Whip on NGOs" *The Zimbabwe Independent* (23 October 2020) available at: <https://www.theindependent.co.zw/2020/10/23/mnangagwa-threatens-to-crack-whip-on-ngos/>.

including ZLHR, had captured the judiciary, after the High Court had ruled that the term of office of the Chief Justice had lapsed on 15 May 2021.²² At a press conference on 21 June 2021, ZANU PF acting political commissar Patrick Chinamasa also blamed NGOs for undermining the country's political, economic, and judicial systems.²³ On 2 September 2021, state spokesperson Nick Mangwana was quoted in the state-sponsored *Herald* newspaper describing ZLHR, Zimbabwe Association of Doctors for Human Rights and Zimbabwe Human Rights NGO Forum as the "Zimbabwe axis of evil". The article went on to accuse the three NGOs of using "fake abductions to advance the false narrative that there are human rights abuses in the country".²⁴

Finally, on 5 November 2021, the Private Voluntary Organisations Amendment Bill, 2021, was gazetted. The Bill is seemingly a culmination of long existing threats to CSOs in Zimbabwe.²⁵ It is an extremely draconian piece of legislation that will subject NGOs to excessive regulation and criminalisation, as discussed in more detail below. Cabinet has also approved principles to introduce so-called "patriotic" provisions, through an amendment to the Criminal Law (Codification and Reform) Act, which is discussed below.

The Bill, if enacted, will criminalise

unauthorised private communications with foreign governments, and false statements that impact on the promotion and protection of the national interests of Zimbabwe. Similar to the PVO Bill, the proposed Patriotic legislation will directly impact on CSOs' international advocacy efforts, and will violate their fundamental rights to freedom of expression and association.

More broadly, human rights defenders (HRDs) and CSO leaders are being subjected to arbitrary arrests and malicious prosecutions for exercising their right to protest and petition, and for expressing views critical of the state, including online, using unconstitutional provisions in the Criminal Law (Codification and Reform) Act and the Maintenance of Peace and Order Act.²⁶ The state continues to pass restrictive pieces of legislation including, most recently, the Maintenance of Peace and Order Act and the Data Protection Act.

Legislative and policy framework for NGO regulation in Zimbabwe

NGOs in Zimbabwe are currently governed under a number of different frameworks.

22 "Govt Issues Chilling Threat Against 'Captured' Judges Who Ruled Against Malaba Stay" *New Zimbabwe* (15 May 2021) available at: <https://www.newzimbabwe.com/govt-issues-chilling-threat-against-captured-judge-who-ruled-against-malaba-stay/>.

23 "Chinamasa Blasts Studio 7 For Allegedly Fronting American Interference" *New Zimbabwe* (2 June 2021) at <https://www.newzimbabwe.com/chinamasa-blasts-studio-7-for-allegedly-fronting-american-interference/>.

24 "Exposing Zim axis of evil" *The Herald* (1 September 2021) available at: <https://www.herald.co.zw/exposing-zim-axis-of-evil/>.

25 *Joint Memorandum to the Cabinet Committee on Legislation by the Minister of Justice and Legal Affairs and the Minister of Labour and Social Services, Re: Amendment to the Private Voluntary Organisations Act and the Deeds Registries Act* Available at: http://archive.kubatana.net/docs/legisl/moj_pvo_letter_090520.pdf; "Mnangagwa threatens to crack whip on NGOs" *The Zimbabwe Independent* (23 October 2020) available at: <https://www.theindependent.co.zw/2020/10/23/mnangagwa-threatens-to-crack-whip-on-ngos/>; "Govt Tightens Screws On NGOs Operations, Approves Amendment To PVO Act" *Centre for Innovation and Technology* (1 September 2021) available at: <https://kubatana.net/2021/09/01/govt-tightens-screws-on-ngos-operations-approves-amendment-to-pvo-act/>.

26 "Zimbabwe: Government Weaponizes Criminal Justice System To Stifle Dissent" *Robert F Kennedy Human Rights Centre* (7 July 2021) available at: <https://rfkhumanrights.org/news/zimbabwe-government-weaponizes-criminal-justice-system-to-stifle-dissent>.

NGOs and CSOs may be established and regulated as: private voluntary organisations (PVOs), trusts, or as common law *universitas* associations. While the different options have thus far allowed NGOs to avoid some of the overly bureaucratic and/or restrictive provisions of the Private Voluntary Organisations Act [Chapter 17:05] (PVO Act), and allowed them to exercise freedom of association by enabling them to choose their preferred type of organisation and regulatory regime, incoming legislation, notably the PVO Bill, and policy directives, will result in state regulation of all NGOs in the country.

1. PVOs – Registration under the Private Voluntary Organisation Act

The PVO Act was promulgated in 1995. It was borne out of, and retained, the repressive provisions of the colonial Welfare Organisations Act, which had been enacted to control NGOs associated with the liberation movement or challenging the human rights situation in then Rhodesia. The PVO Act thus gave the post-colonial government similarly excessive powers to stifle the operating space of CSOs.

The Act has onerous restrictions for PVOs, and allows for over-regulation and excessive control over the sector. The composition of the PVO Board allows for excessive executive interference as all members are appointed by the Minister of Public Service, Labour and Social Welfare, including six ministerial representatives, and the Registrar of PVOs sitting *ex officio* on the Board.²⁷

The Act, in section 2, requires all organisations to be registered as PVOs if their programmes involve: addressing the material, mental, physical or social needs of persons or families; provision of charity to persons or families in distress; prevention

of social distress or destitution of persons or families; uplifting the standard of living of persons or families; provision of funds for legal aid; and prevention of cruelty to, or the promotion of the welfare of, animals. There are, however, currently exemptions from what is defined and regulated as a PVO under the Act, including trusts registered with the High Court, and prescribed associations, or associations operating exclusively for the benefit of its members. Section 6 makes it a criminal offence for any member of the public to collect any contributions from the public without authorisation under the Act, and makes it an offence for PVOs to commence activities or seek financial assistance from any source without registration.

The registration process is conducted by the Registrar of Private Voluntary Organisations, currently the Director of Social Welfare in the Ministry of Public Service, Labour and Social Welfare. The registration procedure before the Board is unclear and extremely vague, with no time limits, and allows for the Board to refuse applications, or cancel registration certificates, on vague grounds such as that an organisation is not furthering the objects mentioned in its application, or that the organisation has failed to submit a particular return or report. The Act also requires organisations to submit new applications if they want to change their names or objects, leaving their security of operations unclear in the interim.

The Registrar retains a register with particulars of PVOs, but the extent of information currently being retained is excessive and intrusive, and there is no legal certainty as to what is required. Section 15 also provides that PVOs are required to submit prescribed reports and returns and *such additional information as may be required by the Registrar*. Section 19 also

²⁷ Section 3, Private Voluntary Organisations Act [Chapter 17:05].

allows the Board to appoint its own auditor to audit a PVO's accounts. Section 20 also allows for an inspecting officer appointed by the Minister to inspect any aspect of the affairs or activities of any PVO; to examine all documents; and to examine the books, accounts and other documents relating to the financial affairs of any PVO. Failure to comply results in criminal liability including imprisonment of up to three months. These provisions allow for violation of the right to privacy of PVOs, and result in gross interference in internal affairs of civil society organisations without judicial oversight. The Act only allows for persons aggrieved by decisions of the Board to appeal to the Minister, but the Minister is not independent, and is not a court of law.

Section 21 allows for the Minister to unilaterally suspend the executive committee of a PVO on vague grounds such as that an organisation has ceased to operate in furtherance of the objects specified in its constitution; the maladministration of the organisation; involvement in any illegal activities; or it is necessary or desirable to do so in the public interest. Section 22 also allows for the Minister to appoint a provisional trustee to manage an organisation for up to 60 days. Section 21 was struck down as an unconstitutional violation of the right to a fair hearing in the case of *Holland & Ors v Minister of the Public Service*,²⁸ so is invalid, but currently remains on the statute books.

In light of the complex registration procedures; vague grounds for denial of registration; excessive executive powers allowing for interference in internal governance of PVOs; and severe criminal sanctions in the Act that violate freedom of

association standards under constitutional and international law,²⁹ many NGOs have chosen not to register or have not been able to register under the Act. NGOs that have been unable to register under the PVO Act have thus far managed to continue to operate, as trusts or *universitas* organisations, but incoming legislation may remove this exemption, as highlighted below.

2. Trusts – Registration under the Deeds Registries Act

Many NGOs are currently registered as trusts under sections 5(r1) and 70A of the Deeds Registries Act [*Chapter 20:05*], through an application for registration of trust deeds with the Registrar of Deeds at the High Court. The application and deed must provide the objects of the trust, details of the founder, trustees and beneficiaries, and the identity of any other person with effective control of the trust property. The objects of trusts are unrestricted, and organisations that perform the same functions as PVOs may lawfully register themselves as trusts.

As mentioned above, in 2019, the District Administrator of Masvingo purported to suspend the activities of the Community Tolerance Reconciliation and Development Trust (COTRAD) in terms of the PVO Act and the 2003 Policy discussed below. ZLHR filed an urgent chamber application on their behalf, and the High Court declared the purported suspension as null and void, on the basis that COTRAD was registered as a trust and not as a PVO, and therefore was not regulated under the PVO Act, and ordered that it could resume its activities.³⁰

28 *Holland & Others v Minister of the Public Service, Labour and Social Welfare* 1997 (1) ZLR 186 (S); 1998 1 SA 389 (ZS).

29 ICNL Civic Freedom Monitor, Zimbabwe, available at: <https://www.icnl.org/resources/civic-freedom-monitor/zimbabwe#analysis>.

30 *Community Tolerance and Development Trust and 4 Others v District Administrator, Masvingo and Minister of Local*

Incoming legislation may however remove such an exemption in the future.

3. *Universitas* – Establishment under Common Law

The common law of Zimbabwe also allows for NGOs to establish themselves as a *universitas*, which is a voluntary association of members with a constitution. There is no formal registration requirement, and the objects and nature of its activities are unrestricted by law, except to the extent that they must be set out in a constitution, and be for the benefit of its members.

In the case of *Zimbabwe Lawyers for Human Rights and Another v President of the Republic of Zimbabwe and Another*,³¹ ZLHR was recognised as having been originally established as a *universitas*, and that as a *universitas* it has an independent legal persona, standing and rights of its own, distinct from the rights of its individual members.

As with trusts, incoming legislation may remove the ability of such associations to operate without registration as a PVO in the future.

4. NGO Policy 2003

As highlighted above, in 2003, the Ministry of Public Service, Labour and Social Welfare introduced an unlegislated *Policy on Operations of Non-Governmental Organisations*³² “to ensure effective harmonisation of existing Governmental structures and NGO operations at all levels in line with Governmental policy”, with

an objective of, “[outlining] the reporting structures to be used by ... NGOs to facilitate the monitoring of their activities by central, provincial and local Government”.

The policy requires that: (1) every NGO providing humanitarian and developmental assistance register with the Ministry of Public Service, Labour and Social Welfare; (2) NGOs adhere to their mandate (the conditions and scope of operation agreed upon on registration); (3) NGOs obtain an MoU with the relevant Government ministry/agency for operations at a national level; (4) for operations at a provincial level, NGOs obtain a resolution from the Provincial Development Committee (PDC), a letter of support from the Provincial Administrator, and approval from the Provincial Governor; and (5) for operations at a local authority level, NGOs obtain a resolution from Council. The policy also provides that, (6) in order to *commence operations at any level*, an NGO must obtain an MoU with the respective Government ministry/agency, which will: outline the scope of the NGO’s operations; identify its target beneficiaries; set monitoring targets to be reported to the respective government authority; and set the period of operation. Finally, the policy provides that (7) in order for Government to “keep track” of NGO activities, NGOs are required to submit quarterly reports to their Government partner agencies.

The Provincial Development Coordinators’ (PDCs) recent directives in June-July 2021, highlighted above, sought to rely on the 2003 NGO Policy to control the operations of *all* NGOs, even those that are not registered as PVOs. The directives also

Government, *Public Works and National Housing* High Court unreported case 2152/19; “Zim Court Overturns NGO Ban” ZLHR (20 March 2019) at: <https://www.zlhr.org.zw/?p=1692>.

31 *Zimbabwe Lawyers for Human Rights and Legal Resources Foundation v President of the Republic of Zimbabwe and the Attorney General* 2003 (2) ZLR 444 (S) (31/1/99); [2003] ZWSC 12 (19 November 2003). Available at: <https://zimlil.org/node/1233>.

32 *Policy on Operations of Non-Governmental Organisations in Humanitarian and Development Assistance in Zimbabwe* (30 July 2003) available at: <https://reliefweb.int/report/zimbabwe/policy-operations-non-governmental-organisations-humanitarian-and-development>.

introduced new onerous requirements, such as submission to the PDC of: annual work plans, monthly reports, information on workshops, information on commissioning of projects, and information on work being undertaken in Harare Metropolitan Province; and submission of “any other pertinent information as regards their operations”; and for NGO country directors to make a courtesy call with the PDC and Minister of State for Provincial Affairs and Devolution, for formalities; all within a strict and arbitrary one-month deadline.

In a combination of public and private advocacy, as well as the urgent court application filed by the Human Rights NGO Forum and Crisis Coalition, represented by ZLHR, NGOs successfully challenged the legality of the 2003 Policy, and its current application by the PDCs, on numerous grounds, including that: the PDCs and Provincial Governors have no powers to regulate NGOs in terms of the PVO Act and Provincial Councils and Administration Act; the 2003 Policy has no legal basis, as it is not a legislated policy and is not provided for in the PVO Act; the Policy only applies to the limited scope of coordination in the provision of food and developmental assistance, not to all NGO activities; and the directives that NGOs will be shut down arbitrarily without adequate notice, consultation, or an appeal process, are unlawful, as they violate the constitutional rights to privacy, due process and administrative justice.³³

5. Code of Procedure for the Registration and Operations of Non-Governmental Organisations in Zimbabwe

On 27 April 2007, the Secretary for Public Service, Labour and Social Welfare gazetted the “Code of Procedure for the Registration and Operations of Non-Governmental Organisations in Zimbabwe” (General Notice 99 of 2007). It creates certain operational requirements for “Non-Governmental Organisations”. It also created specific conditions for “international organisations”, including to sign “MOUs” with ministries relevant to their area of technical operations. In contradiction to the 2003 NGO Policy, which the PDCs sought to enforce against “local organisations” by requesting MoUs in 2021, the General Notice stated that:

“Local PVOs are not required to enter into Agreements with central government or ministries. For operational purposes, however, the organisations shall, prior to their registration, notify the local authorities of their intended operations.”

6. Proposed “patriotic” amendments to the Criminal Law (Codification and Reform) Act

In October 2020, Cabinet stated that it had approved principles to amend the Criminal Law (Codification and Reform) Act (the Criminal Law Code)³⁴ to criminalise private communications – including by NGOs and CSOs – with foreign governments, and “false

33 “CSOs reject Provincial Coordinator, Tafadzwa Muguti unlawful directives” *Human Rights Forum* Twitter @ZimHRNGOForum Available at: <https://twitter.com/ZimHRNGOForum/status/1412777166245408769/photo/2>; “Civil society statement on the demand for Memoranda of Understanding by Masvingo and Harare Provincial Development Coordinators” *Crisis in Zimbabwe Coalition* (2 July 2021) available at: <https://www.crisisim.org/post/civil-society-statement-on-the-demand-for-mous-by-masvingo-harare-pdcs/>; “NGOs take govt to court over ban” *Newsday* (4 August 2021) available at: <https://www.newsday.co.zw/2021/08/ngos-take-govt-to-court-over-ban/>; *Zimbabwe Human Rights NGO Forum & Crisis in Zimbabwe Coalition Trust v Provincial Development Coordinator of Harare Metropolitan Province, Minister of State for Provincial Affairs and Devolution of Harare Metropolitan Province, Minister of Local Government and Public Works, Minister of Home Affairs and Cultural Heritage & Minister of Public Service Labour and Social Welfare* (17 September 2021) Harare High Court unreported case 4113/21.

34 L Towindo “New law to criminalise unpatriotic acts” *Sunday Mail* (4 October 2020) available at <https://www.sundaymail.co.zw/new-law-to-criminalise-unpatriotic-acts>.

statements” that would cause damage to national interests (many have referred to these amendments as the “Patriotic Bill”).³⁵

These “patriotic” provisions are seemingly a direct reprisal for civil society’s reporting of rights abuses at national, regional and international levels, resulting in calls from international bodies such as United Nations mandate holders,³⁶ and from the African Commission on Human and People’s Rights,³⁷ to the Zimbabwean government for reform, affecting Zimbabwe’s international reputation and standing. If the provisions are passed, they will criminalise civil society’s international advocacy efforts to raise human rights issues of concern in Zimbabwe with international partners, including the African Commission on Human and People’s Rights, and the UN. Such provisions will result in the criminalisation of the work of civil society, in violation of citizens’ rights to freedom of association and expression, creating an operating environment of fear in which civil society is silenced and isolated; and communications with the outside world are suppressed.

7. Proposed amendments to the PVO Act

The Private Voluntary Organisations Amendment Bill, gazetted on 5 November 2021, that seeks to amend the PVO Act, has been justified by the state on the basis of the need to comply with the Financial Action Task Force recommendations on anti-money laundering and counter-terrorism; to streamline administrative procedures for

regulation and registration; and to prohibit PVOS from political involvement. Notable areas of concern included in the Bill are outlined below:

- **It will place all NGOs, including trusts and common law *universitas* organisations, under the repressive provisions of the PVO Act.** Human rights NGOs like ZLHR have tried in the past to register as PVOs and have been declined, and the criteria and procedure for registration, and their status pending registration is still unknown, therefore the security of their continued operations are at risk;
- **It will prohibit NGOs from supporting or opposing any political party or candidate.** This vague provision violates NGOs’ political rights, right to free speech and freedom of association. It will criminalise legitimate human rights work, such as advocacy challenging rights abuses by the ruling party, or providing legal support to members of an opposition party subjected to rights abuses;
- **It will require NGOs to apply for approval for any organisational changes,** which may be rejected and reversed and result in NGOs being deregistered. This is an arbitrary interference in, and over-regulation of, the internal affairs of an NGO;
- **It gives the Minister powers to impose special measures over**

35 *Thirty-Eighth Post Cabinet Press Briefing*: 27th October 2020 available at: <http://www.veritaszim.net/node/4527>; “Zimbabwe’s looming Patriot Bill cause for great concern” *Media Institute for Southern Africa* (14 October 2020) available at: <https://zimbabwe.misa.org/2020/10/14/zimbabwes-looming-patriot-bill-cause-for-great-concern/>.

36 *Visit to Zimbabwe – Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association* (A/HRC/44/50/Add.2) available at: <https://reliefweb.int/report/zimbabwe/visit-zimbabwe-report-special-rapporteur-rights-freedom-peaceful-assembly-and>.

37 *Resolution on the Human Rights Situation in the Republic of Zimbabwe* ACHPR/Res. 443 (LXVI) 2020 available at: <https://www.achpr.org/sessions/resolutions?id=474>.

organisations, or classes of organisation, that it deems to be at high risk or vulnerable to terrorism abuse. The criteria for designating an organisation is not provided in the Bill, it simply refers to criteria that will be provided from time to time by FATF. There is no risk-based approach or consultation procedure with NGOs provided. The Minister is given excessive discretion to impose repressive measures on any specified group of NGOs, such as human rights organisations receiving foreign funding;

- **It gives the Minister powers to suspend executive committee members and to impose provisional trustees** “on information provided to him” for vague grounds such as “maladministration” or “in the public interest”. The provisional trustees are paid from the funds of the organisation; and may even dispose of funds and assets of the organisation with the approval of the Minister.
- **It provides for regulations to be prescribed requiring disclosure of foreign funding** which may violate organisations’ right to freely associate and receive funding from foreign partners, if applied as a negative condition in the registration or auditing process. As long as they are complying with the financial, anti-money laundering, foreign exchange, banking and taxation laws of the country, there should not be restrictions on foreign funding for legitimate charitable activities.

Constitutional and international human rights law standards

The above analysis of the incoming PVO Bill and “patriotic” provisions, shows that the state intends to increase its powers of regulation over the NGO sector, restricting its operating space. While it is standard practice internationally for NGOs to be regulated by an independent regulatory board, and for legal frameworks to be put in place to prevent terrorism financing and international money laundering for organisations found to be at risk; constitutional and international standards require that laws and policies regulating NGOs are reasonable and proportionate, and ensure respect for human rights and freedoms.

1. Financial Action Task Force (FATF) standards

The state has justified the need to amend the PVO Act on the basis of a need to incorporate the recommendations of the Financial Action Task Force (FATF). The FATF³⁸ is a non-treaty inter-governmental body tasked with the promotion of anti-money laundering and combating the financing of terrorism (AML/CFT) measures. The 40 FATF AML/CFT recommendations are non-binding, but ratings from FATF mutual evaluation reviews on a state’s implementation of the recommendations have real consequences, affecting countries’ bond ratings, access to financial markets, trade, and investment opportunities.³⁹

FATF recommendation 1 calls upon countries to adopt a risk-based approach

³⁸ More about the FATF: <http://www.fatf-gafi.org/about/>.

³⁹ “How Can Civil Society Effectively Engage In Counter-Terrorism Processes?” European Centre for Not-for-profit Law (ECNL) *Human Security Collective* (December 2017) available at: https://fatfplatform.org/assets/CS_engagement_in_CT_process.pdf.

to identify, assess and understand money laundering (ML) and terrorist financing (TF) risks, to adopt appropriate measures to mitigate risk, and to apply preventive measures commensurate to the nature of risks. Recommendation 8 is read with recommendation 1, and requires countries to implement adequate laws and regulations to regulate certain non-profit organisations (NPOs) identified as being vulnerable to terrorist financing abuse.

The FATF evaluates the effectiveness of the implementation of its recommendations in terms of 11 Immediate Outcomes. Immediate Outcome 10 provides that, “[t]errorists, terrorist organizations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector”. In terms of Immediate Outcome 10.2, governments are required to show that they have “... implemented a targeted approach, conducted outreach, and exercised oversight in dealing with NPOs that are at risk from the threat of terrorist abuse”.⁴⁰ Countries are thus required to apply focused and proportionate measures, in line with the risk-based approach, to protect NPOs from terrorist financing abuse.

FATF recommends a proportionate, risk-based approach, specifically requiring:

1. Ongoing outreach to the sector to identify risks to the NPO sector;
2. Proportionate, risk-based supervision or monitoring of NPOs at risk;

3. Effective investigation and information gathering;
4. Proportionate measures commensurate with the risks identified; and
5. Effective mechanisms for international co-operation.

Zimbabwe’s compliance with the recommendations was reviewed by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) in 2016,⁴¹ and follow-up reports were done in 2019⁴² and 2021.⁴³ In the 2016 report, Zimbabwe was found to be non-compliant with Recommendation 8 on the basis that: the state had not reviewed its legal and regulatory framework for registration, licensing and monitoring of the NPO sector; there had been no outreach to the NPO sector on AML/CFT; and the regulator had not identified NPOs at high risk to terrorism abuse, or applied proportionate monitoring controls against them. By 2019, however, Zimbabwe’s rating had changed from non-compliant to partly compliant as the government had identified some NPOs at risk, had conducted AML/CTF outreach workshops, and had set up a National Taskforce dealing with AML/CTF compliance. The remaining deficiencies identified included: the need to improve risk-based assessments and strategies to identify vulnerabilities in the sector; insufficient policies promoting accountability, integrity, and public confidence in the administration

40 *Briefer Understanding and Responding to Government Over-Regulation based on Money Laundering and Terrorist Financing Restrictions* (2021) International Center for Not-For-Profit Law (ICNL).

41 *Anti-money laundering and counter-terrorist financing measures, Zimbabwe, Mutual Evaluation Report - September 2016* Eastern and Southern African Anti-Money Laundering Group (ESAAM), available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/ESAAMLG-Mutual-Evaluation-Report%20of%20Zimbabwe-2016.pdf>.

42 *Anti-money laundering and Counter-terrorist financing measures: Zimbabwe Technical Compliance Re-Rating Report - September 2019* Eastern and Southern African Anti-Money Laundering Group (ESAAM) available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/fur/ESAAMLG-Follow-Up%20Report-Zimbabwe-Sept-2019.pdf>.

43 *Anti-money laundering and Counter-terrorist financing measures: Zimbabwe Technical Compliance Re-Rating Report – 7th Enhanced Follow-Up Report to Zimbabwe’s assessment of anti-money laundering and counter-terrorist financing measures, April 2021* Eastern and Southern African Anti-Money Laundering Group (ESAAM) available at: <https://www.fatf-gafi.org/publications/mutualevaluations/documents/fur-zimbabwe-2021.html>.

and management of NGOs; and the need for international co-operation frameworks to share information regarding particular NGOs suspected of terrorism financing.

The focus of the re-rating report with regard to the NGO sector was thus not based on the need for a new specific legislative framework for NGOs, but on the effective implementation of a risk-based strategy and policies. Since the first report, the state has also passed the Money Laundering and Proceeds of Crime (Amendment) Act. The Act establishes the Financial Intelligence Unit (FIU), which monitors all sectors including the NGO sector to ensure compliance with AML/CFT measures. The state's main focus is now to establish an effective institutional framework for implementation of AML/CTF policies through the FIU.⁴⁴ Once the country has developed such a framework there will be no need to amend the PVO Act, as the system will already enable authorities to identify the risks and mitigate them in all sectors, including the NPO sector. An amendment to the PVO Act without the necessary systems to detect money laundering and financing of terrorism would be a futile exercise.

Best practice guidance on the recommendations provides that states must not use the FATF recommendations as an excuse to crackdown on the NGO sector, and that they must protect the legitimate activities of NPOs.⁴⁵ Most importantly, recommendation 8 is not supposed to be applied with a blanket approach to the NPO sector as a whole, but from a targeted risk-

based approach to specific NPOs identified as being at risk of TF abuse. The FATF has also highlighted that in many countries NPOs have developed effective self-regulatory processes to ensure accountability and transparency of their operations, including strengthened internal controls and risk mitigation measures. Unfortunately Zimbabwe – like many other states such as Nigeria, Tanzania, and Uganda – is selectively using the FATF recommendations to introduce draconian legislation criminalising legitimate activities of NGOs and imposing burdensome requirements on the entire sector, as opposed to specific NGOs at risk, and without consultation of the sector.⁴⁶ The state has failed to demonstrate that increasing the executive's regulatory powers over NGOs through the proposed PVO Act amendments is proportionate or necessary for AML/CTF purposes.

Since 2015, FATF itself has identified that such misuse of the FATF recommendations are “unintended consequences” of the FATF process globally, and have sought to redress this. FATF revised Recommendation 8 and its interpretive note to guide a more proportionate focused application of Recommendation 8. The interpretive note states that “[m]easures adopted by countries to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities. ... Actions taken for this purpose should, to the extent reasonably possible, avoid any negative impact on innocent and legitimate beneficiaries of charitable activity”.⁴⁷ In 2021, FATF launched a project to address

44 *Bank-use Promotion & Suppression Of Money Laundering Unit Bi-Annual Report – July-December 2016* available at: http://www.veritaszim.net/sites/veritas_d/files/Bi-Annual%20Report%20of%20the%20Bank%20Use%20Promotion%20and%20Suppression%20of%20Money%20Laundering%20Unit.pdf.

45 *Best Practices Combating The Abuse Of Non-Profit Organisations (Recommendation 8 FATF (June 2015))* available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>.

46 ICNL (n 40 above).

47 *International Standards On Combating Money Laundering And The Financing Of Terrorism & Proliferation: The FATF Recommendations and Interpretive Notes* The Financial Action Task Force (FATF) (Updated June 2019) available at: <https://www.icnl.org/wp-content/uploads/FATF-Recommendations-2012-June-2019.pdf>.

the “unintended consequences” of the recommendation.⁴⁸

Contrary to the PVO Bill provisions, FATF has clarified that measures imposed to address Recommendation 8 should not impact the NPO sector as a whole, only specific NPOs at risk; should not disrupt or discourage legitimate charitable activities; and should not result in financial exclusion of NPOs or threats to fundamental human rights.⁴⁹ Where risks have been identified as low, measures should be simplified: detailed registration procedures, additional reporting requirements, and external audits are not appropriate. Where existing regulations and measures sufficiently address the risks to the sector, no further regulations are required.

The *Cotonou Declaration on strengthening and expanding the protection of all Human Rights Defenders in Africa* also provides that counter-terrorism measures in Africa should not be used to curtail the work of human rights defenders, or to impose restrictions such as prohibitions and restrictions on the ability to create, register and operate as NGOs. The Declaration warns against the use of financing restrictions to subvert the significant role played by civil society, particularly through requirements that prohibit or restrict the possibility of organisations receiving funding from foreign and external sources.⁵⁰

2. Human rights standards

The PVO Act, 2003 NGO policy, the proposed incoming legislation (PVO Bill and “patriotic” provisions), and the ongoing repression of civil society, as highlighted above, also amount to an unreasonable violation of the rights of human rights defenders and civil society organisations, notably:

- **Freedom of association** protected in article 58 of the Zimbabwe Constitution, article 22 of the International Covenant for Civil and Political Rights (ICCPR), and article 10 of the African Charter on Human and People’s Rights (Banjul Charter);
- **Freedom of expression** protected in section 61 the Zimbabwean Constitution, article 19 of the ICCPR and article 9 of the Banjul Charter;
- The **right to privacy** protected in section 57 of the Constitution and article 17 of the ICCPR; and
- The **right to administrative justice and due process** protected in section 68 of the Constitution and article 7 of the Banjul Charter.

The *Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*,⁵¹ known as the

48 “High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards: Mitigating the Unintended Consequences of the FATF Standards” *FATF* (27 October 2021) available at: <<https://www.fatf-gafi.org/publications/financialinclusionandnpoissues/documents/unintended-consequences-project.html>>.

49 “Best Practices Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8)” *FATF* (June 2015) available at: <<https://www.fatf-gafi.org/documents/documents/bpp-combating-abuse-npo.html>>.

50 *Cotonou Declaration on strengthening and expanding the protection of all Human Rights Defenders in Africa*, Adopted at the 2nd International Symposium on Human Rights Defenders in Africa, 1 April 2017, Cotonou, Benin, <https://www.achpr.org/news/viewdetail?id=31>.

51 *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (A/RES/53/144) available at: <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>.

“Declaration on Human Rights Defenders” (HRDs Declaration), also protects the rights of human rights defenders to, among many other things, freely: conduct human rights work individually and in association with others; form associations and non-governmental organisations; meet or assemble peacefully; have unhindered access to and communication with non-governmental and inter-governmental organisations; lawfully exercise the occupation or profession of human rights defenders; and to solicit, receive and utilise resources for the purpose of protecting human rights, including the receipt of funds from abroad. Contrary to the current regulatory provisions under Zimbabwean law, and provisions being proposed, the African Commission on Human and Peoples’ Rights’ *Guidelines on Freedom of Association and Assembly in Africa*⁵² also provide extensive guidelines on human rights standards to be applied in the regulation of the NGO sector, as broken down in ICNL’s Freedom of Association Checklist for Law Reform Advocates,⁵³ including that relevant laws and policies:

- Should not require organisations to obtain formal legal status to operate.
- Should not punish informal or non-registered organisations solely due to their choice not to register.
- Should presume that an organisation is registered once the organisation has submitted its registration materials.
- Should provide applicants for registration with a clear explanation of the basis for refusing to register an organisation, in writing.
- Should respond to a registration application within a reasonable time period.
- Should ensure that restrictions on an organisation’s objectives and activities are limited and subject to international human rights standards.
- Should not require organisations to submit information to the authorities unless the information is necessary in a democratic society to promote 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.
- Should not grant the government oversight body the power to inspect an organisation to ensure compliance with the organisation’s own internal governance rules.
- Should require the oversight body to obtain a court order that includes clear legal and factual grounds justifying the need for an inspection prior to conducting an inspection of an organisation.
- Should explicitly protect an organisation’s right to contest an inspection before an independent court.
- Should support organisations to create and run a self-regulatory body, if they so choose.
- Should ensure that organisations are permitted to seek and receive funds

52 *Guidelines on Freedom of Association and Assembly in Africa* African Commission on Human and People’s Rights 60th Ordinary Session, Niamey, Niger, 22 May 2017; Resolution 319 (LVII) 2015 available at https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf.

53 “Freedom of Association Checklist for Law Reform Advocates” ICNL (March 2021) <https://www.icnl.org/post/tools/achpr-checklists-for-law-reform-advocates>.

from foreign sources.

- Could require organisations to notify the government of receipt of funding from foreign sources, but not require organisations to obtain permission from the government to receive such funding.
- Should ensure that non-profit organisations are subject to the same laws governing issues of money laundering, fraud, corruption, trafficking, and other offences, as all other sectors, and ensure that the rules and punishments for violations are the same as those generally governing individuals and for-profit enterprises.
- Should ensure that the heightened scrutiny applied to higher risk organisations, such as banks and security firms, are not broadly applied to non-profit organisations.
- Should ensure that sanctions in the relevant law or policy are proportional to the misconduct in question.
- Should ensure that individual members are not liable for actions undertaken by the organisation as a legal entity.
- Should consider requiring the regulating authority to submit to a full judicial hearing to suspend or dissolve an organisation.
- Should ensure that an organisation may appeal a decision by the regulating authority to an impartial and independently established court.

In 2019, the UN Special Rapporteur on the rights to freedom of peaceful assembly

and of association visited Zimbabwe at the invitation of the government of Zimbabwe. In his report, that was presented to the UN General Assembly during the June to July 2020 44th session, he made recommendations on how the government could enhance the right to freedom of association in its legislative and regulatory framework of the non-profit sector.⁵⁴

In paragraph 125(a) of the report, the Special Rapporteur recommended that the government amend the PVO Act to open up the operating space for the non-profit sector, in full consultation with civil society and other relevant stakeholders, and avoid enacting regressive legislation in the future. Several shortcomings were identified in his report on how the PVO Act already grants too much discretionary power to the responsible Minister to interfere in internal affairs of a PVO. It was also stated that the procedure for registration under the PVO Act was onerous, lengthy and complex. In accordance with the African Commission Guidelines highlighted above, he recommended that the government:

- Adopts a regime of declaration or notification, whereby an organisation is considered a legal entity as soon as it has notified its existence to the regulating authorities;
- Ensures that the registration procedure for national and international organisations is simpler and more expeditious;
- Abolishes the practice of using memorandums of understanding that render the operation of associations burdensome and limit their autonomy and independence;
- Avoids interference in the activities of organisations through the use of inspectors;

⁵⁴ Visit to Zimbabwe – Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association Human Rights Council, Forty-fourth session, 15 June–3 July 2020, Agenda item 3 (A/HRC/44/50/Add.2) available at: <<https://reliefweb.int/report/zimbabwe/visit-zimbabwe-report-special-rapporteur-rights-freedom-peaceful-assembly-and>>.

- Alleviates reporting requirements;
- Facilitates the ability of organisations to access funding and resources without interference; and
- Avoids the use of excessive sanctions, particularly incarceration, for omissions in law.

The proposed amendments to the PVO Act do not take into account the recommendations by the UN Special Rapporteur and the international best practice human rights standards highlighted above.⁵⁵ To the contrary, the proposed amendments introduce even more repressive provisions, and should be abandoned to comply with Zimbabwe's human rights obligations and to open up civic space in Zimbabwe.

Recommendations on creating an enabling CSOs operating space⁵⁶

As highlighted above, international and constitutional law requires that the state protect citizens' rights to freely associate and form non-profit organisations, without undue restrictions and regulation by the state.

It is recommended that new laws and regulations for the sector should facilitate these rights. They should not be fast-tracked or introduced lightly, but rather after wide public consultations, to ensure the best possible enabling framework is established. The public must be included in, and have adequate opportunity to input into, the legislative process.⁵⁷ After input, the public should be provided with feedback from the authorities on how their input was either incorporated or discarded, with explanations, for public transparency and accountability purposes.⁵⁸

It is recommended that new legislation for the sector should also follow international best practice of establishing a simple non-mandatory registration process for organisations to register themselves as legal entities, rather than an overly bureaucratic complicated procedure.⁵⁹

Best practice is for NGOs to simply notify the government of their existence and operations, through submission of minimal information and documentation, and if there is no negative response from the government within a clearly defined and limited amount of time, organisations should be deemed to be registered and have legal status by default.⁶⁰

⁵⁵ *Best practices related to the rights to freedom of peaceful assembly and of association: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, Human Rights Council Twentieth session, General Assembly (A/HRC/20/27) available at: <<https://undocs.org/A/HRC/20/27>>; *Trends in relation to the exercise of the rights to freedom of peaceful assembly and of association based on communications sent and information received under the mandate: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Human Rights Council, Thirty-eighth Session 18 June–6 July 2018 Agenda item 3 (A/HRC/38/34) available at: <<https://undocs.org/A/HRC/38/34>>.

⁵⁶ Many of these recommendations are adopted from the International Center of Not-for-Profit Law (ICNL)'s Presentation on *Elements of a Good NGO Law: Best Practices in NGO Legislation*.

⁵⁷ For example, wide consultation processes were conducted in South Africa and Namibia when they developed laws regulating the non-profit sector.

⁵⁸ "Public Participation: Principles and Best practice" ICNL available at: <https://www.icnl.org/wp-content/uploads/Attachment-3-Public-Participation-Principles-and-Best-practice-Eng.pdf>.

⁵⁹ *Visit to Zimbabwe – Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association* Human Rights Council, Forty-fourth Session, 15 June–3 July 2020, Agenda item 3 (A/HRC/44/50/Add.2) available at: <<https://reliefweb.int/report/zimbabwe/visit-zimbabwe-report-special-rapporteur-rights-freedom-peaceful-assembly-and>>

⁶⁰ See for example, Tunisia's *Decree Number 88 of 2011*, and Morocco's *Decree 1-58-376 on the Right to Establish Associations*.

Registration should only be declined on clear limited grounds. It should not be subject to onerous conditions resulting in arbitrary cancellations of registration, or requirements for re-registration.

Registration should also be optional, not compulsory.⁶¹ NGOs such as common law *universitas* associations should be allowed to freely associate and exist, even if they do not choose to register as legal entities.⁶²

It is recommended that legislation regulating non-profit organisations should be restricted to providing only minimum standards for the organisational structure and good governance of NGOs, it should not over-regulate the sector. The legislation may establish an independent statutory oversight body. However, the powers of such a body should be limited. The oversight body should respect the right to privacy of organisations, and not require the maintenance or production of detailed personal and intrusive information on the activities of NGOs. Inspections should also only be conducted in terms of a court order, with adequate justification, such as reasonable suspicion of an offence. Reporting requirements should also be kept to a minimum.

With regard to compliance with the Financial Action Task Force standards on anti-money laundering and counter-terrorism financing, discussed in detail above, it is recommended that the state take a risk-based approach to identify any risks within the non-profit sector, targeting only specific organisations at risk, rather than restricting the whole sector.⁶³ Sustained outreach to the sector is key – for the sector to self-identify, understand and mitigate any risks, and to develop appropriate policies and standards. The state is recommended to undertake targeted, risk-based supervision and monitoring, and to apply only focused and proportionate measures to mitigate any risks identified. Existing laws on terrorism and money laundering can be applied to the sector where any unlawful activities have been identified, in accordance with the requirements for due process. Unnecessary legislative provisions granting excessive executive powers – that will result in interference with legitimate charitable activities and will violate fundamental rights – should be avoided; the state should always ensure the safeguarding of civic space in accordance with international standards.⁶⁴

It is also recommended that organisations not be hindered from soliciting and receiving foreign funding,⁶⁵ so long as they

61 See for example, South Africa's *Non-Profit Organisations Act*, sections 12 and 13.

62 Legal status would simply allow organisations to enter into contracts and own property, for example.

63 The government is required to: take a risk-based (rather than whole-of-sector) approach; undertake sustained outreach to the sector concerning terrorism financing issues; undertake targeted, risk-based supervision or monitoring of non-profit organisations; and apply focused and proportionate measures to mitigate the risk. See: Interpretative Notes to Recommendations 1 and 8, *The International Standards on Combating Money-Laundering and the Financing of Terrorism & Proliferation (the FATF Recommendations)* (updated October 2021), Financial Action Task Force available at: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>, *Methodology to Assess Technical Compliance with Recommendations and Effectiveness of AML/CFT Systems* (updated November 2020) Financial Action Task Force available at: <https://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>, *Best Practices Combating the Abuse of Non-Profit Organisations (Recommendation 8)* Financial Action Task Force (June 2015) available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>.

64 *Good Practices Memorandum for the Implementation of Countering the Financing of Terrorism Measures while Safeguarding Civic Space* (September 2021) Global Counterterrorism Forum available at: https://www.thegctf.org/Portals/1/Documents/Links/Meetings/2021/19CC11MM/CFT%20GP%20Memo/CFT%20Memo_ENG.pdf?ver=fahs72uclyyYOtj7WDwBkQ%3d%3d

65 See for example Ethiopia's *Organization of Civil Societies Proclamation No. 1113/2019*.

comply with banking, taxation, customs and foreign exchange laws.

Most importantly, civil society organisations in Zimbabwe are encouraged to develop their own frameworks for self-regulation. International best practice is for state laws to set only minimum standards for the regulation of non-profit organisations, allowing non-profit organisations to adopt their own more comprehensive self-regulatory standards.

NGOs may wish to establish an umbrella, representational or self-regulatory body. Such a body could promote greater compliance with anti-money laundering and counter-terrorism standards, by granting accreditation or certification to non-profit organisations with strong financial, risk management, accountability, good governance and transparency frameworks and procedures.⁶⁶ Such an approach would grant the sector more independence, and place it beyond reproach, negating any justification for state interferences on the

basis of terrorism or other financial abuse.

In summary, it is recommended that the state abandon repressive laws, policies and practices resulting in over-regulation, arbitrary interference and excessive criminalisation of the legitimate work of NGOs in Zimbabwe. It is recommended the state conduct wholesale legal and policy reform — in consultation with non-profit organisations, and allowing for self-regulation of the sector — to facilitate a more enabling operating environment for civil society.

The state must allow NGOs to freely associate and operate without fear of reprisals, in accordance with their fundamental rights, and enable them to play their critical role of complementing government and supporting vulnerable citizens, for a more free, fair and open society.

⁶⁶ *Best Practices Combating the Abuse of Non-Profit Organisations (Recommendation 8)* Financial Action Task Force (June 2015) available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>.



Prisca Dube of ZLHR giving legal advice to a client during a mobile legal clinic in Matabeleland South province



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