



**CIVIL SOCIETY REGULATION OR SILENCING?
EXAMINING THE REGULATORY MECHANISMS FOR CIVIL SOCIETIES IN
ZIMBABWE AND THEIR IMPACT ON THE ROLE OF CIVIL SOCIETY
ORGANISATIONS IN THE ADVANCEMENT OF HUMAN RIGHTS**

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS OF THE DEGREE OF LLM (HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA)

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DEDICATION

This is for everyone in civil society working under difficult circumstances to ensure the respect, protection, promotion, and fulfilment of human rights in Zimbabwe.

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CHAPTER 1: INTRODUCTION

1. Background

Civil society organisations (CSOs) are indispensable in society because they play a crucial role in keeping democratic processes alive and reinforcing good governance, especially through their involvement in human rights work.¹ In June 2022, government officials documented over 20 000 CSOs operating in Zimbabwe.² These include academic, professional, religious and residents' associations, labour unions, student groups, think tanks, community-based organisations, human rights organisations and humanitarian and development charities.³ Despite their invaluable contribution to human rights and governance, the Government of Zimbabwe (GoZ) is distrustful of CSOs and has from time to time introduced laws aimed at limiting civic space and the scope of work that CSOs can conduct under the guise of regulation.

The Constitution of Zimbabwe, 2013 (the Constitution) is the supreme law of Zimbabwe⁴ and guarantees the rights to freedoms of assembly, association, and expression.⁵ However, it does not provide for CSO regulation thus there is a need to turn to national legislation. Before Zimbabwe gained independence in 1980, CSOs were regulated under the Welfare Organisations Act of 1967. In 1971, the Unlawful Organisations Act [Chapter 11:13] outlawed the operations of organisations that were part of the colonial resistance movement.⁶ It was repealed by the Private Voluntary Organisations (PVO) Act [Chapter 17:05] in 1976, which has been amended twice and is currently the regulatory law.⁷ The PVO Act defines private voluntary organisations and obligates all organisations that fall within the ambit of that definition to register, failing which penalties that include fines and imprisonment may be imposed.⁸ The registration procedures laid out in the PVO Act have been criticized for being too complex, thereby acting

¹ In this paper CSOs will be used to include all groups working in civil society in their different legal forms to advance human rights.

² International Center for Not-For-Profit Law 'Zimbabwe' (2022) available at <https://www.icnl.org/resources/civic-freedom-monitor/zimbabwe>.

³ G Chikoto-Schultz & K Uzochukwu, 'Governing Civil Society in Nigeria and Zimbabwe: A Question of Policy Process and Non-State Actors' Involvement' (2016) *Nonprofit Policy Forum*, 7(2), 137-170 available at <https://doi.org/10.1515/npf-2015-0051>.

⁴ Section 2, Constitution of Zimbabwe, 2013 available at: <https://www.refworld.org/docid/51ed090f4.html>.

⁵ As above, section 58 and 61.

⁶ Unlawful Organisations Act [Chapter 11:13] available at <https://www.zimllii.org/akn/zw/act/1971/55/eng%402016-12-31>.

⁷ Private Voluntary Organisations Act [Chapter 17:05] available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/57016/122023/F1252828187/ZWE57016.pdf>.

⁸ PVO Act, section 6.

as a barrier to CSO operations.⁹ As a result, some organisations have opted to establish themselves as common law universities and trusts which are not regulated under the PVO Act.

In 2004, the Non-Governmental Organisations Bill (HB 13), 2004 (the NGO Bill) was gazetted after the African Commission on Human and Peoples' Rights published an adverse report on Zimbabwe after a fact-finding mission.¹⁰ The report was not well received by the GoZ as evidenced by an article published by the state-controlled Herald newspaper stating that 'the report was similar to reports produced by the British-funded Amani Trust, which is well known for its anti-Zimbabwe stance and falsifying the situation in the country.'¹¹ It is on this contextual basis that Kagoro postulated that the NGO Bill was not a legitimate attempt to regulate civil society but rather a 'vindictive and punitive' response to the African Commission's adverse report.¹² Although the NGO Bill underwent all the Parliamentary processes required to pass it into law when it was submitted to the former Zimbabwean President Robert Mugabe, he did not sign it into law and no explanation was ever provided.¹³

2. Problem Statement

In 2020 President Emmerson Mnangagwa announced that the PVO Act would be amended to 'deal with NGOs and PVOs operating outside their mandates and out of sync with the government's humanitarian priorities.'¹⁴ Subsequently, on 5 November 2021, the GoZ gazetted the Private Voluntary Organisations Amendment Bill H.B. 10, 2021 (the PVO Bill) to amend the PVO Act.¹⁵ The PVO Bill aims: to ensure compliance with the Financial Action Task Force (FATF) recommendations; streamline administrative procedures to enable efficient regulation and prevent PVOs from conducting political lobbying.¹⁶ However, the sincerity of the GoZ's motivations in amending the PVO Act through this Bill has been questioned. The Zimbabwe

⁹ C Massimo & D Makwerere 'Policy And Advocacy: Civil Society Participation In The Formulation Of Human Rights Related Public Policies In Zimbabwe' (2015) *Journal of Public Policy in Africa Volume 3 Issue 5* available at https://www.researchgate.net/publication/295079412_POLICY_AND_ADVOCACY_CIVIL_SOCIETY_PARTICIPATION_IN_THE_FORMULATION_OF_HUMAN_RIGHTS_RELATED_PUBLIC_POLICIES_IN_ZIMBABWE.

¹⁰ African Commission on Human and Peoples' Rights 'Zimbabwe Report on the Fact-Finding Mission' (2002) available at https://www.achpr.org/public/Document/file/English/achpr34_misrep_zimbabwe_2002_eng.pdf.

¹¹ B Kagoro 'The Prisoners Of Hope: Civil Society And The Opposition In Zimbabwe' (2005) *African Security Studies*, 14:3, 19-29 available at <https://doi.org/10.1080/10246029.2005.9627367>.

¹² As above.

¹³ Chikoto-Schultz & Uzochukwu (n3) 150-151.

¹⁴ 'Zimbabwe: Mnangagwa Threatens to Crack Whip On NGOs' Zimbabwe Independent 23 October 2020 available at <https://allafrica.com/stories/202010240005.html>.

¹⁵ Zimbabwe Government Gazette Number 127 of 5 November 2021 available at <https://gazettes.africa/archive/zw/2021/zw-government-gazette-dated-2021-11-05-no-127.pdf>.

¹⁶ PVO Bill, Memorandum.

Human Rights Association (ZimRights) has posited that the PVO Bill is ‘perhaps the biggest threat against civil society today.’¹⁷ This is because it facilitates greater repressive regulation of CSOs which leaves room for targeting specific CSOs that are most vocal in their criticism of the GoZ. These concerns were echoed by 24 CSOs in a letter to the Speaker of Parliament wherein they noted that ‘the government could be using this legislation as a pretext to clamp down on civil society in Zimbabwe.’¹⁸

The main reason that has been proffered to support the PVO Bill is the need to comply with recommendation 8 of the FATF. Recommendation 8 seeks to ‘ensure that non-profit organisations (NPOs) are not misused by terrorist organisations to pose as legitimate entities.’¹⁹ The interpretive note for recommendation 8 states that measures put in place to comply with this recommendation must respect countries’ obligations under the United Nations (UN) Charter and international human rights law.²⁰ Furthermore, it highlights the need to ensure that legitimate charitable activity continues to flourish amid efforts to ensure compliance with recommendation 8.²¹ Therefore, as a measure that may be put in place to comply with recommendation 8, the PVO Bill must not unnecessarily limit rights nor interfere with the legitimate operation of CSOs. It is thus important to undertake this study to examine whether the PVO Bill opens or closes civic space in Zimbabwe. This study will be done from a comparative perspective, with good practices and lessons learnt being drawn from Kenya’s Public Benefit Organisations Act.

3. Research Objectives

This study aims to:

1. Examine the extent to which the laws that regulate CSOs in Zimbabwe comply with international law and best practices.
2. Analyse the role CSOs play in the advancement of human rights in Zimbabwe and the impact regulation has on its ability to contribute to that advancement.

¹⁷ Zimbabwe Human Rights Association ‘How the PVO Bill Threatens Active Citizenship in Zimbabwe The Great Gift Of Active Citizens’ (2022) 17 available at <https://kubatana.net/wp-content/uploads/2022/02/The-Great-Gift-of-Active-Citizens-lr.pdf>.

¹⁸ ‘PVO Bill to Silence CSOs’ Centre for Innovation and Technology 25 February 2022 available at <https://kubatana.net/2022/02/25/pvo-bill-meant-to-silence-csos/>

¹⁹ Financial Action Task Force ‘International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation’ (2012) 59 available at www.fatf-gafi.org/recommendations.html.

²⁰ Financial Action Task Force (n19) 58.

²¹ Financial Action Task Force (n19).

3. Highlight lessons that Zimbabwe can draw from CSO regulation in Kenya to ensure that it does not impair the ability of CSOs to contribute to the respect, protection, promotion, and fulfilment of human rights.

4. Research Questions

Main Question

1. Does the regulation of civil society, through the introduction of the PVO Bill, boost or restrict CSOs' contribution to the advancement of human rights in Zimbabwe?

Sub Questions

1. What role have CSOs played in the advancement of human rights in Zimbabwe?
2. What are the national, regional, and international legal standards that should govern the operation of CSOs in Zimbabwe to enable them to meet their human rights objectives?
3. What is the legal framework for the regulation of CSOs in Kenya and how does it impact the operating environment for CSOs?
4. What lessons can Zimbabwe take from the Kenyan experience?

5. Literature Review

Scholte defines civil society as 'the political space where voluntary associations explicitly seek to shape the rules (in terms of specific policies, wider norms, and deeper social structures) that govern one or the other aspect of social life.'²² This is the preferred definition for this study because it is inclusive of all organisations and associations working towards reform of laws, policies, norms, and attitudes to bring change. Vieira and DuPree build on this understanding of civil society by arguing that CSOs may adopt different structures, but they all work to 'amplify the voices of particular interests and are natural advocates for devalued or invisible groups.'²³ Understanding the definition of civil society in this context aids the quest to understand the link between civil society and human rights. Invariably human rights CSOs emerge to push for the creation of conditions that are conducive to the enjoyment of human rights by all. According to Vieira and DuPree, civil society does this by 'providing a sphere of action for all

²² JA Scholte 'Civil Society and Democracy in Global Governance (2002) *Global Governance* Vol. 8, No. 3 283 available at

https://www.jstor.org/stable/pdf/27800346.pdf?refreqid=excelsior%3A0157d4a6330c95d2d1beffe9573f2b32&ab_segments=&origin=&acceptTC=1.

²³ O Vieira and AS DuPree 'Reflections on Civil Society and Human Rights' (2004) *International Journal on Human Rights* 56 available at <https://sur.conectas.org/wp-content/uploads/2017/11/sur1-eng-full.pdf>.

social groups; making injustice public; protecting private spaces from state and market incursion; intervening and interacting directly with legal and political systems and driving social innovation.²⁴ Literature that currently exists is thus useful in understanding the need for CSOs and the role that they play particularly in the advancement of human rights.

This study seeks to consider what role CSOs play in advancing human rights in Zimbabwe and whether regulation through the PVO Bill will interfere with their ability to continue playing this role. Thus, this paper begins by providing a breakdown of the different CSOs in Zimbabwe and the human rights work that they do. Masunungure breaks down the composition of Zimbabwean civil society noting that it is 'a heterogeneous community thematically spread across the spectrum of humanitarian charities and CBOs to developmental CSOs and governance-oriented civic associations.'²⁵ However, his discussion is focused on democracy and not human rights. As a result, he does not discuss how CSOs in Zimbabwe have contributed to the advancement of human rights and for this research, a more human rights-based approach will be adopted in discussing civil society work.

Part of this study will focus on how civil society has historically been regulated in post-independence Zimbabwe. Therefore, Kagoro's discussion of the context in which the NGO Bill was gazetted, the contents of the Bill, and the implications it may have had will be instructive.²⁶ Like the NGO Bill, the PVO Bill was gazetted after civil society had been very active in exposing human rights violations and attracting international attention in the process. In response, government officials made public pronouncements accusing CSOs of not adhering to their mandates and threatened to enact laws to regulate them, shortly thereafter the two bills were gazetted. Although the analysis by Kagoro does not include the PVO Bill, the PVO Bill was largely influenced by the NGO Bill, thus the analysis is helpful in this paper. The Southern Africa Human Rights Defenders Network provides an analysis of the PVO Bill in its 2021 publication titled 'The Proposed PVO Amendment Bill in Zimbabwe: A Significant Threat to Civic Space.'²⁷ However, the report does not address the context within which this Bill comes from and trends in CSO regulation in Zimbabwe that have culminated in the current Bill.

²⁴ Vieira and DuPree (n23) 57.

²⁵ E Masunungure 'The Changing Role Of Civil Society In Zimbabwe's Democratic Processes: 2014 And Beyond' available at <https://library.fes.de/pdf-files/bueros/simbabwe/13718.pdf>.

²⁶ Kagoro (n11).

²⁷ Southern Africa Human Rights Defenders Network 'The Proposed PVO Amendment Bill in Zimbabwe: A Significant Threat to Civic Space' (2021) available at <https://kubatana.net/wp-content/uploads/2021/11/The-proposed-PVO-Amendment-Bill-in-Zimbabwe.pdf>.

An important aspect of this paper is drawing inspiration from the Kenyan experience with CSO regulation and discussing how these experiences impact the role that CSOs play in human rights advancement. Massimo and Makwerere's research is critical in this regard because it discusses the role played by CSOs in the formulation of public policies related to human rights in Zimbabwe and draws parallels with the experience of Kenya.²⁸ They assert that 'Kenya is almost a replica of Zimbabwe in terms of its historical socio-economic and more importantly political realities.'²⁹ This is because torture, politically motivated extrajudicial killings, repression, detention without trial, corruption, human rights violations by the police, and impunity which are commonplace in Zimbabwe are in their view trademarks of Kenya.³⁰ Zimbabwe may be described in a similar manner hence the need to analyse Kenya's regulatory framework to formulate recommendations for Zimbabwe.

Considering the above, this study seeks mainly to augment research that currently exists on CSO contribution to the advancement of human rights in Zimbabwe, trends in CSO regulation in the country, how the regulation proposed in the PVO Bill will affect CSOs in Zimbabwe. This study will also make recommendations which can be implemented to ensure that the CSO regulatory space is conducive in creating an environment where CSOs can work effectively to achieve their human rights, governance, and democratisation mandates.

6. Methodology

This is a desktop study which will employ primary and secondary sources of information. The primary sources will include international and regional human rights instruments as well as legislation regulating CSOs in Zimbabwe and Kenya. Secondary sources will include books, journal articles, newspaper articles, reports, internet sources, and other relevant materials.

7. Structure

1. Chapter 1 – Introduction

Introduces the study laying out its purpose, what motivated it, an overview of the study, and how it will contribute to the existing body of scholarly work on civil society regulation in Zimbabwe.

²⁸ Massimo and Makwerere (n9).

²⁹ Massimo and Makwerere (n9) 10.

³⁰ As above.

2. Chapter 2 – Civil Society and Human Rights in Zimbabwe

Locates Zimbabwean CSOs in human rights discourse. The discussion will briefly highlight the history of CSOs in Zimbabwe and how they contribute to the advancement of human rights in Zimbabwe.

3. Chapter 3 – Civil Society Regulation in Zimbabwe

In this chapter, the focus will be on the Zimbabwean experience regarding CSO regulation. To begin with, this chapter will discuss the legal frameworks that address CSO regulation and apply to Zimbabwe. Specifically, how civil society has been regulated in the past and how it is currently regulated. The discussion will then progress to focus on the PVO Bill.

4. Chapter 4 – Civil Society Regulation in Kenya

Highlights the law that regulates CSOs in Kenya to draw lessons for Zimbabwe. Particular attention will be to the positive aspects of the law that Zimbabwe may adopt.

5. Chapter 5 – Conclusion and Recommendations

Contains the conclusion summing up the key issues stemming from this study and making recommendations based on the analysis undertaken in the previous chapters.

8. Limitations of Study

This study will be limited to the experiences of Zimbabwe and Kenya. The analysis of the impact of CSO regulation will be limited to organisations working on human rights issues. Furthermore, this paper will be limited to the PVO Bill. Given that the PVO Bill has not been passed into law yet, the focus will be on its potential impact as opposed to its actual impact. The limited amount of time, literature resources written on the subject, and maximum word count requirement are factors that will also limit the scope of the study.

CHAPTER 2: CIVIL SOCIETY AND HUMAN RIGHTS IN ZIMBABWE

1. Introduction

The role played by CSOs in human rights is so significant that Goel and Tripathi posit that without their involvement, the UN human rights system would not function well at the global level.³¹ This similarly applies to domestic and regional systems. Despite the contributions of CSOs, there is no universal definition for them. Scholte defines civil society as ‘the political space where voluntary associations explicitly seek to shape the rules’ and that is the starting point for this study.³² Gordon White highlights that CSOs enjoy autonomy from the state and are formed voluntarily by members of society to protect or advance their interests.³³ This understanding brings out the four characteristics of CSOs which are that the organisation must be voluntary, independent, not-for-profit, and work in the public interest. These also apply to human rights CSOs as defined by Weisberg.³⁴

The first criterion is that the organisation must be voluntary, thus it must be formed voluntarily and of their free will by people, not through compulsion by law. Voluntarism can be seen through contributions of money to fund the organisation’s work and time dedicated to the organisation’s work for which one is not compensated.³⁵ Beyond the voluntary commitment of time and resources to the organisation’s work, Ball and Dunn add that after the organisation has been formed membership and participation must remain voluntary.³⁶ This is essential in the formation of the CSO and throughout its lifetime.

The organisation must be independent and free from external interference. Chikoto-Schultz and Uzochukwu explain that CSOs thrive when they have a clear and meaningful separation from the state.³⁷ This is because CSOs would be unable to play their watchdog role effectively

³¹ V Goel and M Tripathi ‘The Role Of NGOs In The Enforcement Of Human Rights: An Overview’ (2010) *The Indian Journal of Political Science* 71(3), 769–793 available at <http://www.jstor.org/stable/42748408>.

³² Scholte (n22) 283.

³³ G White ‘Civil society, democratization and development (I): Clearing the analytical ground’ (1994) *Democratization* 1:2, 375–390, available at <https://www.tandfonline.com/doi/abs/10.1080/13510349408403399>].

³⁴ LS Wiseberg ‘Protecting Human Rights Activists and NGOs: What More Can Be Done?’ (1991) *Human Rights Quarterly*, 13(4) 529 available at <https://doi.org/10.2307/762305>.

³⁵ Massimo and Makwerere (n9) 6.

³⁶ C Ball and L Dunn ‘Non-Government Organizations Guideline For Good Policy And Practice’ (1995) 19 available at <https://www.academia.edu/236930/Non-Governmental-Organisations-Guidelines-for-Good-Policy-and-Practice>

³⁷ Chikoto-Schultz & Uzochukwu (n3) 138.

if they operated as an extension of the state. However, this independence is relative and not absolute, particularly for African CSOs that rely on foreign funding which may influence their priorities. Uhlin argues that civil society is hardly completely autonomous of the state, highlighting that CSOs are often so varied and often include organisations that act in opposition to the state, those that are embedded in state structures, and others that collaborate with the state.³⁸ Therefore, it must be understood that independent CSOs are not inherently anti-state, but may be perceived as such when they deal with an authoritarian regime that they consistently confront over human rights violations.³⁹

The third criterion is that the organisation must not be for profit. Goel and Tripathi assert that the motives for establishing CSOs are purely philanthropic, thus its funds must be used only for the philanthropic provision of services.⁴⁰ However, this view does not account for the costs that CSOs incur in their operations. Therefore, this criterion should be understood to mean that CSOs may make a profit to guarantee their sustainability but not for sharing the profit. This can be done through investments of funds provided for organisational support.

The final criterion is that CSOs must act in the public interest. This simply means that by their very nature, CSOs must work on issues that affect the public in society and champion these issues to bring change that will positively affect society.⁴¹ The initiatives aimed at bringing change must target the public with a focus on the disenfranchised as they are likely to be most in need of the services of CSOs.⁴²

2. Human Rights Situation in Zimbabwe

Zimbabwe has ratified various international human rights instruments and incorporated a Declaration of Rights in the Constitution. However, despite these positive developments, human rights violations remain common. On 1 August 2018, after the first post-Mugabe

³⁸ A Uhlin 'Which Characteristics of Civil Society Organizations Support What Aspects of Democracy? Evidence from Post-communist Latvia' (2009) *International Political Science Review*, 30(3) 273 available at <https://doi.org/10.1177/0192512109105639>.

³⁹ J Okuku 'Civil society and the democratisation processes in Kenya and Uganda: a comparative analysis of the contribution of the Church and NGOs' (2003) *Politikon*, 30:1, 53, DOI: 10.1080/0258934032000073905.

⁴⁰ Goel and Tripathi (n31) 773.

⁴¹ As above.

⁴² Poverty Eradication Network 'Enhancing the Competence and Sustainability of High Quality CSOs in Kenya Report' 11 available at <http://www.penkenya.org/UserSiteFiles/publicDocs/Enhancing%20the%20Competence%20and%20Sustainability%20of%20High%20Quality%20CSos%20in%20Kenya.pdf>.

elections, violent protests erupted in Zimbabwe in response to perceived delays in announcing the presidential election results.⁴³ In response, the military, which had been deployed to assist the police in quelling the protests, killed 6 people and injured 35.⁴⁴ Following this, President Mnangagwa established a Commission of Inquiry led by former South African President, Kgalema Motlanthe.⁴⁵ He appointed the Commission of Inquiry through Proclamation Number 6 of 2018 published in Statutory Instrument (SI) 181 of 2018, which he made per section 2(1) of the Commission of Inquiry Act [Chapter 10:07]. The Commission found the military and the police responsible for the deaths and injuries suffered and made recommendations to prevent their recurrence.⁴⁶ However, there is currently substantial non-compliance with the recommendations which include ensuring accountability for the violations perpetrated.⁴⁷

In January 2019, protests broke out following the President's announcement of a fuel hike, and state security forces were deployed to quell the protests.⁴⁸ In the aftermath, the Zimbabwe Human Rights NGO Forum (ZHR Forum) recorded human rights violations including, 17 cases of extrajudicial killings, 26 abductions, 61 displacements, 81 injuries consistent with gunshot attacks, 586 cases of torture, inhumane and degrading treatment including dog bites, and 954 arbitrary arrests.⁴⁹ The GoZ also violated the right to freedom of expression and access to information by issuing multiple directives ordering internet providers to shut down internet services and access to social media sites between 13 to 21 January.⁵⁰ The perpetrators of the violations have not been held accountable and the GoZ has not made any commitments to remedy this. In 2020 the Zimbabwe Human Rights Commission (ZHRC) received 188 reports of violations of the right to property, shelter, and freedom from torture among others.⁵¹ These

⁴³ Motlanthe Commission of Inquiry 'Report of The Commission of Inquiry into The 1st Of August 2018 Post-Election Violence' (2018) 43 available at <https://kubatana.net/wp-content/uploads/2018/12/Final-Report-of-the-Commission-of-Inquiry-18-DEC-18.pdf>.

⁴⁴ Motlanthe Commission of Inquiry (n43) 47.

⁴⁵ 'Mnangagwa Sets up 7-Member Committee to Look Into Post-Election Killing of 6 Zimbabweans' Voice of America 29 August 2018 available at <https://www.voazimbabwe.com/a/emerson-mnangagwa-sets-up-commission-of-inquiry-into-post-election-violence/4549217.html>

⁴⁶ Motlanthe Commission of Inquiry (n43).

⁴⁷ Zimbabwe Human Rights Association 'The Motlanthe Report What's Next for Victims and The Nation' 2020 available at http://www.veritaszim.net/sites/veritas_d/files/The%20Motlanthe%20Report.pdf.

⁴⁸ Human Rights Watch World Report (2020) available at https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf.

⁴⁹ Zimbabwe Human Rights NGO Forum On the days of Darkness (2019) 4 available at <https://www.hrforumzim.org/wp-content/uploads/2019/02/Shutdown-Atrocities-Report-6-February-2019.pdf>.

⁵⁰ African Commission on Human and Peoples' Rights 'Press Release by the Special Rapporteur on Freedom of Expression and Access to Information in Africa on the Continuing Trend of Internet and social media Shutdowns in Africa' (2019) available at <https://www.achpr.org/pressrelease/detail?id=8>.

⁵¹ Zimbabwe Human Rights Commission Annual Report (2020) 22 available at http://www.veritaszim.net/sites/veritas_d/files/ZHRC%202020%20Annual%20Report.pdf.

cases exclude those reported to other independent commissions and CSOs. The Human Rights Watch reported that in 2020, 70 government critics were abducted and later released by suspected state agents.⁵²

Although civil and political rights seem to be most under attack in Zimbabwe, economic, social, and cultural rights have not been spared. In its 2022 report, Human Rights Watch highlighted that in February 2021, the GoZ ordered the eviction of thousands of people from Chilonga, a communal area in Chiredzi.⁵³ Through SI 50 of 2021 the people were ordered to either acquire fresh rights of use and occupation of the land or vacate it immediately. This was challenged in court and the GoZ subsequently set aside the order through SI 72A/2021, which set land aside for irrigation and did not mention eviction thus the matter was removed from the court roll.⁵⁴ The right to food is also under attack in Zimbabwe due to the partisan distribution of food aid. According to a ZHR Forum and ZPP report, in some areas, traditional leaders normally meet with local Zimbabwe African National Union-Patriotic Front (ZANU PF) supporters to determine how food aid provided by the state will be distributed to exclude opposition party supporters who are also entitled to benefit.⁵⁵

The human rights situation in Zimbabwe is characterised by widespread violations of economic, social, cultural, civil, and political rights. The difference in the rights violated notwithstanding, there is a common thread of lack of government-led initiatives to ensure accountability. This is the situation within which CSOs work in Zimbabwe, and they have taken a leading role in ensuring accountability for human rights violations to protect the vulnerable in different phases as discussed in the historical and contextual analysis herein below.

3. Historical and Contextual Analysis of Civil Society Space and Actors In Zimbabwe

The existence of CSOs in Zimbabwe predates the attainment of independence in April 1980. During colonial times, CSOs operated clandestinely due to racist and repressive policies.⁵⁶ Since

⁵² Human Rights Watch World Report (2021) 757 available at https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf.

⁵³ Human Rights Watch World Report (2022) 751 available at https://www.hrw.org/sites/default/files/media_2022/01/World%20Report%202022%20web%20pdf_0.pdf.

⁵⁴ Zimbabwe Environmental Law Association 'Chilonga Case Update' (2021) <https://zela.org/litigation-alert-22-march-2021-chilonga-case-update/>.

⁵⁵ Zimbabwe Human Rights NGO Forum and Zimbabwe Peace Project 'The Politics of Food: A Contextual Analysis of the Distribution of Food Aid in Zimbabwe' (2021) 15 available at <https://kubatana.net/wp-content/uploads/2021/03/The-Politics-of-Food-Report.pdf>.

⁵⁶ J Mapuva 'An Examination of the Role Played by Selected Civil Society Organisations in Promoting Democracy in Zimbabwe' 1980 – 2007 (2007) 23 available at http://etd.uwc.ac.za/xmlui/bitstream/handle/11394/2756/Mapuva_MPA_2007.pdf?sequence=1&isAllowed=y.

the attainment of independence in 1980, Zimbabwe has seen the growth of four generations of CSOs.⁵⁷

3.1. Civil Society Space and Actors Pre-Independence Period - the 1970s

The first generation existed before independence and was primarily focused on alleviating the suffering of the natives through the provision of basic goods and services.⁵⁸ Examples of such organisations are the *Catholic Commission for Justice and Peace (CCJP)*, the Zimbabwe Council of Churches (ZCC), and the *Zimbabwe Catholic Bishops' Conference (ZCBC)*. This generation typically enjoyed good relations with the GoZ upon the attainment of independence. However, these relations soured when these organisations began exposing human rights violations by the GoZ. For example, CCJP investigated and exposed the Gukurahundi atrocities perpetrated by the GoZ.⁵⁹ Despite the evidence produced by CCJP, the GoZ trivialised the Gukurahundi, and President Mugabe referred to it as a 'moment of madness.'⁶⁰

3.2. Civil Society Space and Actors in the Immediate Post-Independence Period – 1980s

After independence, the second generation of CSOs emerged in the 1980s and provided services related to education, health, and agriculture.⁶¹ The Zimbabwe Congress of Trade Unions (ZCTU) emerged as a civil society actor during this phase.⁶² This generation of civil society actors collaborated with the GoZ, which encouraged their growth partly because their work filled vacuums left by the state in service provision.⁶³ Although these actors simply wanted a partnership with the state, the GoZ preferred a more paternalistic relationship which resulted in co-optation.⁶⁴ ZCTU was initially co-opted but it eventually changed this and became one of the GoZ's critics.⁶⁵

3.3. Civil Society Space and Actors at the Outset of Post-Independence Repression – the 1990s-2000s

The third generation of CSOs emerged at the outset of post-independence repression in three waves. The environment in Zimbabwe was particularly conducive for the emergence of this

⁵⁷ Masunungure (n25).

⁵⁸ Masunungure (n25) 8.

⁵⁹ Mapuva (n56) 24.

⁶⁰ P Maedza 'Gukurahundi - a moment of madness': memory rhetorics and remembering in the post colony' (2019) *African Identities*, 17:3-4, 180 available at <https://doi.org/10.1080/14725843.2019.1657000>.

⁶¹ Masunungure (n25) 9.

⁶² As above.

⁶³ As above.

⁶⁴ Masunungure (n25) 9.

⁶⁵ As above.

generation of CSOs because of the citizenry's growing frustration with the GoZ's failure to deliver on social services and economic opportunities coupled with the GoZ's growing intolerance of dissent. The first wave of CSOs in the third generation emerged in the 1990s such as ZimRights, (1992), Zimbabwe Lawyers for Human Rights (ZLHR, 1996), National Constitutional Assembly (NCA, 1997), and ZHR Forum (1998). The second wave emerged in the early 2000s and included the Zimbabwe Peace Project (ZPP, 2000), Crisis in Zimbabwe Coalition (CiZC, 2001), and Women of Zimbabwe Arise (2003). The final wave emerged thereafter and included Heal Zimbabwe Trust (2008) and Election Resource Centre (2010). The emergence of this generation of CSOs coincided with the formation of the Movement for Democratic Change (MDC) as a formidable opposition party in Zimbabwean politics. Due to the key role of CSOs in the formation of the MDC, this generation of CSOs was 'increasingly met with repression by the ruling party through state organs.'⁶⁶

Following the formation of the MDC, the GoZ used the involvement of CSOs in that process to discredit them by labelling them as partisan and actuated by self-interest to cast doubts on their credibility.⁶⁷ Zhou argues that some CSOs have proven the allegations levelled against them right through their close relationship with the main opposition party.⁶⁸ However, this view does not consider that the relationship has developed over years of CSOs providing opposition politicians with legal representation for arbitrary arrests and human rights violations. This relationship must not thus be misconstrued as partisanship.

Ncube notes that there exists a hegemonic civil society linked to ZANU PF and a counter-hegemonic civil society aligned with the MDC and this causes severe tensions in Zimbabwe.⁶⁹ Given the differences in alliances between these two groups in civil society, tensions are expected. There also exists a third group with no political leanings and the efforts of the other two groups to put forward narratives that favour the political party with whom they are affiliated may undermine the credibility and effectiveness of this group. An example is the Zimbabwe Federation of Trade Unions (ZFTU) which was formed and endorsed by the ruling

⁶⁶ K Helliker 'Debunking Civil Society in Zimbabwe and Most of the World' (2012) 5 available at https://www.ru.ac.za/media/rhodesuniversity/content/politics/documents/Kirk_Helliker_seminar_paper_rhodes.pdf.

⁶⁷ C Zhou 'An Analysis of the Role of CSOs in Promoting Good Governance in Zimbabwe: the Case of the National Constitutional Assembly' (2014) 59 available at https://uir.unisa.ac.za/bitstream/handle/10500/18768/dissertation_zhou_dc.pdf;sequence=1.

⁶⁸ Zhou (n67) 60.

⁶⁹ C Ncube 'Contesting Hegemony: Civil Society and the Struggle for Social Change in Zimbabwe, 2000 – 2008' available at <https://etheses.bham.ac.uk/id/eprint/1086/1/Ncube10PhD.pdf>.

party in 1998.⁷⁰ One of the key issues upon which ZFTU mobilised membership was the accusation that ZCTU had become more donor-driven and not worker-focused.⁷¹ In this way, it positioned itself as a direct competitor of ZCTU and not just another CSO with its mandate. During the post-independence repression phase, actors with a pro-state focus emerged to rival existing actors.

3.4. Civil Society Space and Actors in the Post-Mugabe Political Space – 2017 to Present

In 2017, when President Emmerson Mnangagwa came into power, his administration was dubbed the 'New Dispensation' which would change Zimbabwe's politics and human rights record.⁷² Despite the initial promises to bring change, the operating context for CSOs in Zimbabwe remains unchanged since President Mnangagwa came into power. As a result, the current civic space in Zimbabwe is rated as repressed on the CIVICUS Monitor of national civic space.⁷³

During the 2018 Africa CEO Forum, President Mnangagwa stated his preference for development-oriented CSOs over those focused on governance issues whom he accused of having ulterior motives for regime change.⁷⁴ The operating environment for human rights CSOs, which is marred with difficulties due to government interference with CSO activities, reflects this disdain for human rights CSOs. In 2019, 7 CSO staff members were arrested and charged with subversion of a constitutional government upon their return from a workshop in the Maldives.⁷⁵ After over a year of delays in their prosecution, in August 2020, the prosecution still could not commit to a date for trial to commence and they were then removed from remand.⁷⁶ In June 2021, the Harare Metropolitan Provincial Development Coordinator Mr Tafadzwa Muguti issued a directive for all Harare CSOs to submit their work plans to him failing which they would be banned from operating.⁷⁷ Mr Muguti subsequently purported to impose the ban as

⁷⁰ MasungureE (n25) 11.

⁷¹ P Yeros 'The rise and fall of trade unionism in Zimbabwe, Part I: 1990–1995' (2013) *Review of African Political Economy*, 40:136, 219–232, DOI: 10.1080/03056244.2013.795143.

⁷² Zimbabwe Human Rights NGO Forum 'The New Deception: What Has Changed' (2019) 3 available at <https://www.hrforumzim.org/wp-content/uploads/2019/08/The-New-Deception-What-has-changed.pdf>.

⁷³ CIVICUS Monitor (2022) National Civic Space Ratings: 39 rated as Open, 41 rating as Narrowed, 42 rated as Obstructed, 50 rated as Repressed & 25 rated as Closed available at www.monitor.civicus.org.

⁷⁴ I Kabonga and K Zvokumba 'State–Civil Society Relations in Zimbabwe's Second Republic' (2021) *International Journal of African Renaissance Studies - Multi-, Inter and Trans disciplinary* 17 available at <https://doi.org/10.1080/18186874.2021.1949361>.

⁷⁵ Zhou (n67) 42.

⁷⁶ 'Maldives 7 human rights activists removed from remand' NewsDay 13 August 2020 available at <https://www.newsday.co.zw/2020/08/maldives-7-human-rights-activists-removed-from-remand>.

⁷⁷ Zimbabwe Human Rights NGO Forum 'State of Human Rights Report' (2021) 50 available at <https://kubatana.net/wp-content/uploads/2022/06/ZIM-NGO-FORUM-STATE-OF-HUMAN-RIGHTS-REPORT-2021-EBOOK-2-2.pdf>.

threatened on the CSOs that had not complied with his directive, showing the state's intentions to control CSO operations. Fortunately, the ban was overturned by the High Court after the ZHR Forum and CiZC challenged its legality.⁷⁸

Kabonga and Zvokuomba argue that the deterioration of relations between the state and CSOs in Zimbabwe has not solely been because the state has been heavy-handed but also because some CSOs have irked the state.⁷⁹ Specifically, they refer to protests that have been called for by the ZCTU that led to looting and the destruction of property. An example of this is the 2019 fuel protests which were called for by trade unions and during which there was vandalism and looting.⁸⁰ However, everyone has the right to peacefully protest in Zimbabwe and a call for citizens to exercise their constitutional freedoms must not be construed as an attempt to irk the GoZ unless there is evidence to support the accusations.

4. CSO Activities in Zimbabwe

4.1. National Initiatives

4.1.1. Monitoring and Documentation

Zimbabwean CSOs have been active in human rights monitoring and documentation. Notably, in 1997 the CCJP released a report titled 'Breaking the Silence Report on the 1980s Disturbances in Matabeleland and the Midlands.'⁸¹ The Gukurahundi was one of the worst epochs of violence in post-independence Zimbabwe, but it was shrouded in mystery and the CCJP report exposed the atrocities committed. Another organisation that has made significant contributions to human rights situation monitoring is the Zimbabwe Peace Project which has developed a system for monitoring that is publicly accessible.⁸² This system enables anyone requiring information about human rights violations in Zimbabwe to access the latest statistics which have been verified by ZPP's monitors all over the country. This is important for identifying human rights trends in Zimbabwe to assess whether the situation is improving or worsening. Through human rights monitoring and documentation, CSOs have provided credible data on the human rights situation in the country, which has substantively contributed to evidence-

⁷⁸ As above.

⁷⁹ Kabonga and Zvokuomba (n74) 20.

⁸⁰ 'Zimbabwe police fire live rounds during general strike protests' The Guardian 14 January 2019 available at <https://www.theguardian.com/world/2019/jan/14/zimbabwe-police-clash-protesters-first-day-general-strike>.

⁸¹ Catholic Commission for Justice and Peace in Zimbabwe 'Report On The 1980's Disturbances In Matabeleland And The Midlands' (1997) available at <http://www.rhodesia.nl/Matabeleland%20Report.pdf>.

⁸² Available at <https://www.zimpeaceproject.com/kobo/#!/>

based human rights advocacy and clamour for constitutional, legal, and policy reforms for better governance and human rights protection in the country.

4.1.2. Education

In 1996, at the start of the UN Decade for Human Rights Education, the UN General Assembly defined human rights education as ‘training, dissemination and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes.’⁸³ Human rights education is critical in empowering citizens to know and assert their rights as well as to respond appropriately to violations. In Zimbabwe, this responsibility has largely fallen to CSOs and national human rights institutions. In 2019, the Legal Resources Foundation provided human rights education to 9,590 people on the bill of rights among other issues.⁸⁴ ZimRights educated 2742 people in 2020.⁸⁵ The impact of human rights education, which includes civic education, was seen in 2013 when more than three million people voted for the adoption of the Constitution which had CSO support.⁸⁶

4.1.3. Research and Advocacy

CSOs have evolved from simply providing services to including advocacy for change in their work. Cantwell understands advocacy as ‘actively espousing or taking up the claims of persons whose rights are alleged to be violated.’⁸⁷ Most human rights organisations in Zimbabwe whose work involves advocacy also conduct research to inform their advocacy efforts. A striking example of impactful advocacy undertaken by CSOs in Zimbabwe is the role played by the NCA in advocating for a new constitution. Although the GoZ initially was not in support of a new constitution, it eventually adopted the idea in 1998 and established a Constitution Commission (which had been proposed by the NCA) tasked with conducting consultations on what the new constitution should contain.⁸⁸ The NCA’s outreach and advocacy efforts on constitutional reform that followed resulted in a defeat of ZANU PF in the 2000 referendum where citizens

⁸³ United Nations General Assembly Plan of Action for the United Nations Decade for Human Rights Education, 1995-2004 (1996) available at <https://www.ohchr.org/en/resources/educators/human-rights-education-training/2-plan-action-united-nations-decade-human-rights-education-1995-2004-1996>.

⁸⁴ Legal Resources Foundation ‘Annual Report’ (2019) 9 available at <https://lrfzim.com/download/2019-annual-report/>

⁸⁵ Zimbabwe Human Rights Association ‘Annual Report’ (2020) available at <https://www.zimrights.org.zw/wp-content/uploads/2021/12/ZimRights-2020-Annual-Report.pdf>.

⁸⁶ ‘Zimbabwe Approves New Constitution’ British Broadcasting Corporation 19 March 2013 available at <https://www.bbc.com/news/world-africa-21845444>.

⁸⁷ N Cantwell ‘NGOs and the Convention of the Rights of the Child Bulletin of Human Rights’ (1992) 71.

⁸⁸ Mapuva (n56) 30.

voted against the GoZ's findings of what the new constitution should consist of.⁸⁹ The impact of the work the NCA did in 2000 can be seen in the current Constitution of Zimbabwe, which contains a Declaration of Rights and a clear separation of powers between the executive, the legislature, and the judiciary which prevents the centralisation of power in the President. The research and advocacy on community radio stations done by Amnesty International in 2016 has led to the licensing of community radios in Zimbabwe in 2021.⁹⁰

4.1.4. Litigation

Between 1998 and 2006, ZHR Forum took 291 cases to court alleging human rights violations, and 90% of those cases were awarded to the plaintiffs.⁹¹ Furthermore, by February 2019, ZHR Forum had initiated legal proceedings for 23 civil suits against the military and the police for the violations perpetrated during the protests and stay away that took place in January 2019.⁹² In 2021, ZLHR provided free legal services to 3 787 people in cases related to civil, political, economic, social, and cultural rights protected in the Constitution.⁹³ The impact of the civil litigation carried out has been two-fold namely: improving access to justice through the provision of free legal services to clients and ensuring that perpetrators of violations are held accountable for their actions and made to pay damages for the harm suffered. For example, in 2018, after a ten-year battle by ZLHR, the High Court awarded \$150 000 in damages to Jestina Mukoko, the Director of ZPP who was abducted by Zimbabwean security forces in 2008.⁹⁴ Through criminal litigation, CSOs have improved access to justice by providing free legal services to those whose arrests violated their rights and sometimes aimed to silence them. A recent example is the case of Hopewell Chin'ono, a journalist who was arrested in July 2020 ahead of protests against government corruption which he had exposed. In April 2021, the High Court finally set aside Chin'ono's prosecution ruling that he had been arrested and prosecuted

⁸⁹ J Maseng 'The State, Civil Society and Underdevelopment The Case of Zimbabwe' (2011) 67 available at <https://repository.nwu.ac.za/handle/10394/8507>.

⁹⁰ Amnesty International 'Beyond Tokenism: The need to license community radio stations in Zimbabwe' (2016) available at <https://www.amnesty.org/en/documents/afr46/1613/2015/en/>

⁹¹ Zimbabwe Human Rights NGO Forum 'An Analysis of Zimbabwe Human Rights NGO Forum Legal Cases' (2006) available at <https://www.hrforumzim.org/press-releases/an-analysis-of-zimbabwe-human-rights-ngo-forum-legal-cases/>.

⁹² Zimbabwe Human Rights NGO Forum 'Who Guards the Guards' (2019) available at <https://www.hrforumzim.org/news/anti-impunity-01-2019/>.

⁹³ Zimbabwe Lawyers for Human Rights 'Annual Report' (2021) 8 available at <https://www.zlhr.org.zw/wp-content/uploads/2022/07/ZLHR-annual-rept-21.pdf>.

⁹⁴ Zimbabwe Lawyers for Human Rights 'Jestina Mukoko Finally Gets Justice' (5 October 2018) available at <https://www.zlhr.org.zw/?p=1501>

based on a law that did not exist.⁹⁵ Through litigation, CSOs have successfully held the GoZ accountable for human rights violations.

4.2. Engagement with the African Commission on Human and Peoples' Rights

In 1992 the United Nations General Assembly through GA Res 47/125 of 1992 reaffirmed that 'regional arrangements for the promotion and protection of human rights may make a major contribution to the effective enjoyment of human rights and fundamental freedoms.' The key normative human rights instrument under the African human rights system is the African Charter for Human and Peoples' Rights (the Banjul Charter) and it establishes the African Commission on Human and Peoples' Rights (the Commission) as its main monitoring body. The Commission is established in terms of article 30 of the Banjul Charter. Its functions are laid out in article 45 and include human rights protection, promotion, and interpretation of the Banjul Charter. In fulfilment of its mandate, the Commission engages with CSOs through its public sessions, joint research, and conferences and there is generally no qualification that CSOs must meet to engage with the Commission.⁹⁶ However to participate in Commission activities such as its public sessions and make oral statements CSOs must have observer status.⁹⁷

Only six Zimbabwean CSOs have observer status, and these are the CCJP; ZELA; Zimbabwe Election Support Network; Zimbabwe Women Lawyers Association; ZHR Forum; and ZLHR.⁹⁸ ZHR Forum and ZLHR have utilised their observer status to make oral statements during Commission sessions. In its 2018 oral statement, ZLHR noted the lack of full enjoyment of civil and political rights and the killing of at least two people by the police through the use of excessive force ahead of the 2018 elections.⁹⁹ Notably, ZLHR raised the alarm over the deteriorating human rights situation in Zimbabwe which resulted in the deaths of six people on 1 August 2018.¹⁰⁰ Similarly in May 2022, the ZHR Forum made an oral statement in which it

⁹⁵ Zimbabwe Lawyers for Human Rights Judge ends Persecution of Chin'ono in Landmark Decision which Humiliates Magistrate Ncube (2021) available at <https://www.zlhr.org.zw/?p=2356>.

⁹⁶ International Commission of Jurists 'Engaging Africa-based Human Rights Mechanisms A Handbook for NGOs and CSOs' (2008) 65 available at <https://www.acdhhs.org/wp-content/uploads/2018/11/Africa-Engaging-Africa-based-HRM-Publications-Reports-Thematic-reports.pdf>.

⁹⁷ R Murray 'The African Charter on Human and Peoples' Rights 1987-2000: An overview of its progress and problems' (2001) 1 African Human Rights Law Journal 5 available at <https://www.ahrli.up.ac.za/murray-r>.

⁹⁸ Available at <https://www.achpr.org/ngos>

⁹⁹ Zimbabwe Lawyers for Human Rights 'Statement on the Human Rights Situation in Zimbabwe Presented at the 62nd Ordinary Session of The African Commission On Human And People's Rights' (26 April 2018) available at <https://www.zlhr.org.zw/?p=1357>

¹⁰⁰ Motlanthe Commission of Inquiry (n43).

alerted the Commission of the attempts to shrink civic space through the PVO Bill and the lack of electoral reforms which are concerning given the upcoming 2023 elections.¹⁰¹

The Commission also considers reports submitted by state parties detailing the measures taken to give effect to the rights in the Banjul Charter per article 62. This process provides an important avenue for CSO participation through the submission of alternative reports to provide CSO insights into the human rights situation. This is crucial because as Viljoen points out, 'most state reports lack honest introspection and reflection of work done to fulfil human rights.'¹⁰² In 2007, five human rights organisations submitted a shadow report to the Commission after the GoZ submitted its state report in 2006.¹⁰³ The state report, as expected, painted a positive picture concluding that Zimbabwe had demonstrated its commitment to protecting and promoting human rights notwithstanding financial and other constraints.¹⁰⁴ The shadow report, however, shed light on the human rights violations that had been perpetrated under Operation Murambatsvina and other human rights violations in Zimbabwe, clearly indicating gaps and half-truths in the State report.¹⁰⁵ It provided an alternative view of the situation in Zimbabwe and shed light on the realities that the GoZ had not addressed in its report. In its Concluding Observations, the Commission noted Operation Murambatsvina as an area of concern and highlighted that the state report did not provide adequate details on how those affected by it had been assisted.¹⁰⁶

CSOs can also lodge communications with the Commission alleging violations of the Banjul Charter per article 55. In this way, human rights CSOs play an invaluable role because they act in the public interest to bring cases of human rights violations in their countries to a regional body often on a pro bono basis. This is important given the high costs associated with litigation

¹⁰¹ Zimbabwe Human Rights NGO Forum 'Statement to the African Commission on Human and Peoples' Rights at the 71st Ordinary Session of the African Commission on Human and Peoples' Rights under Agenda Item 4e' (21 April – 13 May 2022) available at <https://www.hrforumzim.org/wp-content/uploads/2022/05/Statement-to-the-African-Commission-71st-session.pdf>

¹⁰² F Viljoen *International Human Rights Law in Africa* (2007) 381.

¹⁰³ Amnesty International et al 'Zimbabwe: human rights in crisis Shadow report to the African Commission on Human and Peoples' Rights' (2007) 3 available at <https://redress.org/wp-content/uploads/2018/01/May-Human-Rights-in-Crisis-Shadow-report-to-the-African-Commission-on-Human-and-Peoples-Rights.pdf>

¹⁰⁴ Amnesty International et al (n103) 3.

¹⁰⁵ Translated to Operation Clear the Filth, this was a 2005 campaign by the Zimbabwean government to forcibly during which formal and informal structures were demolished. The UN estimates that at it resulted in at least 700,000 people losing their homes or livelihood.

¹⁰⁶ African Commission on Human and Peoples' Rights 'Concluding Observations on the Second Periodic Report of the Republic of Zimbabwe Presented to the 41st Ordinary Session of the African Commission on Human and Peoples' Rights (2007) 4 available at file:///C:/Users/HP/Downloads/CO%20and%20Recommendations%20-%20Zimbabwe%207th%20to%2010th%20Periodic%20Report,%201996-2006_ENG.pdf.

which might deter victims particularly given that they must exhaust local remedies before approaching the Commission.¹⁰⁷ 17 communications against Zimbabwe have been considered by the Commission, 9 of which were lodged by CSOs.¹⁰⁸ One of the communications lodged by ZLHR led to an important decision for human rights in Zimbabwe in the case of *Gabriel Shumba v Republic of Zimbabwe*.¹⁰⁹ This was the first time that the Commission found Zimbabwe responsible for torture, which has plagued Zimbabwe for decades. In its decision, the Commission noted that impunity for torture made it impossible for the victim to get justice before domestic courts.¹¹⁰ This finding is significant because it finally ensured accountability for torture. The impact of lodging communications with the Commission is that CSOs have provided victims with support in their quest to access justice and relief when the local courts have failed them. However, implementation of the Commission's recommendations has not been forthcoming as the GoZ lacks the political will to comply. CSOs have played a critical follow-up role in this context, constantly reminding the State of its obligation to abide by and enforce the decisions and recommendations of these regional human rights mechanisms such as the African Commission.

5. Conclusion

CSOs greatly contribute to the advancement of human rights in Zimbabwe at a domestic and regional level. Not only do they contribute to building awareness of human rights in the citizenry, but they also act as watchdogs holding the GoZ accountable for violations. However, there are clear challenges in their ability to work and make an impact. One of these challenges is the strained relations between the state and CSOs, particularly human rights and governance focused CSOs. The GoZ's disdain and mistrust for CSOs are evident in the promulgation of laws crafted to limit CSO operations by closing civic space since 2000.¹¹¹ There is, therefore, a need to examine the legal environment in which CSOs are operating in Zimbabwe and the proposed changes considering how these changes will affect their operations and potential to change the human rights situation.

¹⁰⁷ Article 56 (5).

¹⁰⁸ Available at <https://www.achpr.org/communications>

¹⁰⁹ *Gabriel Shumba v Republic of Zimbabwe*, Communication 288/2004, ACHPR available at https://www.achpr.org/public/Document/file/English/288_04_gabriel_shumba_v_zimbabwe.pdf

¹¹⁰ 'Redress and Zimbabwe Exiles Forum African Commission finds Zimbabwe responsible for torture of a human rights lawyer' (22 March 2013) available at <https://www.chr.up.ac.za/images/centrenews/2013/files/GabrielShumba-220313-final.pdf>.

¹¹¹ Maseng (n89).

CHAPTER 3: CIVIL SOCIETY REGULATION IN ZIMBABWE

1. Introduction

According to Kagoro, relations between the state and CSOs in Zimbabwe have always been contentious.¹¹² Although the GoZ benefits from the economic contributions of CSOs, it remains opposed to their governance and human rights work and the regulatory laws reflect this opposition.¹¹³ The primary law regulating CSOs is the PVO Act. Kabonga *et al* argue that the PVO Act shows an attempt to punish CSOs and curtail citizen participation in governance and policy issues.¹¹⁴ Despite this criticism, in 2020, during his State of the Nation address, President Emmerson Mnangagwa stated that there were CSOs who were ‘operating outside of their mandate and out of sync with the Government’s humanitarian priority programmes’ and that these CSOs were a cause for concern.¹¹⁵ To address this concern, he announced that Parliament would amend the PVO Act. Pursuant to the announcement, on 5 November 2021, the GoZ gazetted the PVO Bill.¹¹⁶ It purportedly aims to: to ensure compliance with the FATF recommendations; streamline administrative procedures to enable efficient regulation and prevent PVOs from conducting political lobbying.¹¹⁷

The PVO Bill proposes to limit the rights of CSOs and those associated with them based on the purposes in the memorandum of the Bill. To ascertain if this is justifiable, this chapter seeks to: provide a background of CSO regulation in Zimbabwe; highlight the applicable constitutional and international law standards and analyse the provisions of the PVO Bill considering the applicable standards. This chapter will conclude by making an overall assessment of the extent to which the PVO Bill complies with national and international human rights standards.

¹¹² Kagoro (n11) 23.

¹¹³ I Kabonga et al ‘Legislative Framework for Civil Society in Zimbabwe’s Second Republic: A Sociological Review’ (2021) *International Journal of African Renaissance Studies - Multi-, Inter- and Trans disciplinary* 7 available at <https://doi.org/10.1080/18186874.2021.1994863> .

¹¹⁴ As above.

¹¹⁵ Veritas ‘State of the Nation Address’ (2020) available at https://www.veritaszim.net/sites/veritas_d/files/SONA%202020-10-22.docx.

¹¹⁶ Private Voluntary Organisations Amendment Bill HB 10 of 2021 available at https://www.veritaszim.net/sites/veritas_d/files/H.B.%2010%202021%20Private%20Voluntary%20Organisation%20Amendment%20Bill_0.pdf.

¹¹⁷ PVO Bill, Memorandum.

2. Background to CSO Regulation in Zimbabwe

During the colonial era the Welfare Organisations Act 93 of 1967 was enacted primarily to entrench control over CSOs who were seen to be sympathetic to the liberation movements.¹¹⁸ As is currently the case, CSOs were at that time actively disseminating information on the human rights violations perpetrated by the government, which made their relationship with the state uneasy.¹¹⁹ The Welfare Organisations Act was thus enacted to close civic space by giving the government the power to control CSOs.¹²⁰ In 1976, the PVO Act replaced the Welfare Organisations Act but retained its repressive provisions.¹²¹ Although the PVO Act was a colonial creation used to stifle CSOs, the GoZ retained it after independence, and it is currently the primary law regulating CSO operations.

Currently, Zimbabwean CSOs exist as either PVOs, trusts, or universitas.¹²² PVOs, per section 2 of the PVO Act exist for the upliftment of members of society through the provision of legal and welfare services among other services, and to collect contributions or funds for these purposes. Numerous exceptions exist, and one of these is trusts. Trusts are regulated under the Deeds Registries Act [Chapter 20:05]. The scope of activities that can be done by trusts is usually unlimited provided they benefit the members or a specific group.¹²³ The third form that CSOs take in Zimbabwe is that of universitas regulated under common law and the PVO Act does not apply to them.¹²⁴ Universitas are entities that have members, a constitution, and do activities for the benefit of their members.¹²⁵

The PVO Act provides for mandatory registration of all PVOs.¹²⁶ However, there are exceptions and this has enabled some CSOs to operate as trusts or common law universitas to which the PVO Act does not apply.¹²⁷ The registration process as laid out in section 9 of the PVO Act is strenuous as it obligates organisations to publish a notice of their application in a newspaper

¹¹⁸ TH Muzondo 'NGOs, Legislation and Self-Regulation in Zimbabwe' (2009) 1 available at http://archive.kubatana.net/html/archive/opin/090609tm.asp?sector=cact&year=2009&range_start=91#download

¹¹⁹ As above.

¹²⁰ As above

¹²¹ Muzondo (n118) 4.

¹²² Southern Africa Human Rights Defenders Network (n27) 9.

¹²³ O Saki 'Zimbabwe' (2010) *International Journal of Not-for-Profit Law* 12 (2) 92 available at [https://heinonline.org/HOL/LandingPage?handle=hein.journals/ijnpl12&div=24&id=&page=.](https://heinonline.org/HOL/LandingPage?handle=hein.journals/ijnpl12&div=24&id=&page=)

¹²⁴ PVO Act section 2(1)(v).

¹²⁵ Saki (n123).

¹²⁶ Kabonga I et al (n113) 7.

¹²⁷ PVO Act, section 1.

at their own expense.¹²⁸ The PVO Board established by the PVO Act considers an application for registration and exercises its discretion to either grant or reject it.¹²⁹ The Minister is empowered to inspect the PVOs' financial records on an impromptu basis.¹³⁰ Furthermore, the PVO Act enables governmental control over CSOs by granting the PVO Board the power to weed out 'undesirable' CSOs and deny their applications because they are 'not bona fide operating in furtherance of the objects mentioned in their application for registration.'¹³¹ Further, the Minister has the power to suspend a PVO's executive committee if they consider it necessary or desirable to do so in the public interest.¹³² This vague basis for suspension of the executive committee gives the Minister too much discretion to interfere with the work of PVOs who may be registered and are conducting work the GoZ does not approve of. Generally, the PVO Act has curtailed CSO activities by providing the government with avenues such as those highlighted above to interfere with CSO activities.¹³³

The PVO Act has received widespread criticism since its promulgation. Some of this criticism came from the African Commission in its 2002 report on Zimbabwe, in which it recommended that the government repeal the PVO Act because it limits civil liberties.¹³⁴ Instead of repealing the PVO Act or amending it to make it less repressive, in 2004, the GoZ sought to repeal the PVO Act and replace it with the NGO Bill, an even more repressive law.¹³⁵ Although the NGO Bill was severely criticised by CSOs, it was approved by Parliament but surprisingly former President Mugabe did not assent to it, and it was ultimately not passed into law.¹³⁶ By the time the President decided not to sign the Bill, CSOs in Zimbabwe had either shut down operations or relocated in response to the threat of closure.¹³⁷ Furthermore, as Muzondo argues, the decision not to pass the NGO Bill must not be misconstrued as a gesture of goodwill by the GoZ because it was made clear that the NGO Bill was not dead but had simply been put on the back burner.¹³⁸ Therefore, the resurgence of the NGO Bill in the form of the PVO Bill is not surprising, as the threat of the re-emergence of the NGO Bill has been ever-present.

¹²⁸ Section 9(2).

¹²⁹ Section 9(5).

¹³⁰ Kabonga I et al (n113) 7.

¹³¹ Section 9(5)(ii).

¹³² Section 21(1)(d).

¹³³ Kabonga and Zvokuomba K (n74) 194.

¹³⁴ African Commission on Human and Peoples' Rights (n10).

¹³⁵ International Center for Not-for-Profit Law 'Comments On Zimbabwe PVO Amendment Bill' (2021) 1 available at https://www.veritaszim.net/sites/veritas_d/files/ICNL%20Comments%20on%20PVO%20Amd%20Bill.pdf.

¹³⁶ Chikoto-Schultz & Uzochukwu (n3) 150.

¹³⁷ Muzondo (n118) 1.

¹³⁸ As above.

Saki attributes the GoZ's efforts to stifle CSOs through 'increased legislative and administrative interference' to the increased demand for democratic space and reforms in Zimbabwe, which CSOs have often championed.¹³⁹ After the failed attempt to pass the NGO Bill into law, the GoZ did not make any other attempts to change the law regulating CSOs. However, the threats to do so have been consistent. In 2012, a few months before elections 29 CSOs were banned from operating in Masvingo for allegedly ignoring demands to renew their annual registration.¹⁴⁰ Given the timing of the ban and the work that CSOs do in monitoring violations during elections, this paper postulates that it was aimed at ensuring that the CSOs could not carry out their legitimate work. The timing of the current push for the passing of the PVO Bill as Zimbabwe prepares for the 2023 elections appears to be a page out of the 2012 playbook.

The PVO Bill is the first attempt at changing the legislative framework regulating CSOs in Zimbabwe under the rule of President Mnangagwa following various threats against CSOs by the President and government ministers. In 2018, the acting Minister of Public Service issued a statement in which he accused CSOs of meddling in politics and threatened to expel them.¹⁴¹ In March 2022, while addressing a rally in the Binga District, President Mnangagwa accused CSOs of dabbling in politics and said that ZANU PF, as the ruling party, could expel these CSOs from the country and they could not do anything about it.¹⁴² These and other sentiments expressed by government officials show the GoZ's growing resentment toward CSOs. The GoZ's view of CSOs and its attitude towards them must be kept in mind when analysing the PVO Bill.

3. Applicable Legal Standards

The Constitution is the supreme law in Zimbabwe, and any law inconsistent with it is invalid to the extent of the inconsistency.¹⁴³ It mandates that all international instruments to which Zimbabwe is a party be incorporated into domestic law.¹⁴⁴ Flowing from this requirement is the GoZ's obligation to ensure that national laws do not violate international laws to which

¹³⁹ Saki (n123) 89.

¹⁴⁰ 'Zimbabwe suspends NGOs as possible election looms' Reuters 15 February 2012 available at <https://www.reuters.com/article/ozatp-zimbabwe-ngos-20120215-idAF1OE81E06A20120215>.

¹⁴¹ Kabonga and Zvokumba K (n74) 190.

¹⁴² 'Mnangagwa Threatens NGOs' ZimEye 23 March 2022 available at <https://www.zimeye.net/2022/03/23/mnangagwa-escalates-threats-against-ngos/>.

¹⁴³ Section 2(1).

¹⁴⁴ Section 34.

Zimbabwe is bound.¹⁴⁵ Zimbabwe is a party to the International Covenant on Civil and Political Rights (ICCPR)¹⁴⁶ and the African Charter on Human and Peoples' Rights (ACHPR).¹⁴⁷ Consideration of the regulation of civil society through a human rights lens raises concerns about the enjoyment of several rights such as the right to freedom of expression,¹⁴⁸ the right to administrative justice,¹⁴⁹ the right to participate in politics,¹⁵⁰ and perhaps most crucially the right to freedom of association.¹⁵¹ The right to freedom of association is a hallmark of civic space because, through the exercise of this right, people have the power to come together and form associations to champion causes that they care about.¹⁵² As the formation of associations is a crucial component of the right to freedom of association, international standards obligate states to protect the right of people in their jurisdictions to form, join and participate in associations.¹⁵³ Therefore, to comply with this obligation, states must desist from passing laws that regulate associations in violation of the right to freedom of association and other related rights.

The ICCPR in article 22(2) provides for strict criteria to be used in limiting freedom of association. Firstly, the limitation must be prescribed by law and the provision must be 'sufficiently precise to enable an individual or NPO to assess whether their intended conduct would be in breach of the law and foresee the likely consequences of any such breach.'¹⁵⁴ Secondly, the limitation imposed must be necessary in a democratic society. This criterion requires that the imposed limitation be proportionate and be the least restrictive limitation

¹⁴⁵ Veritas 'Bill Watch 37/2022 PVO Amendment Bill and International Law' (2022) available at <https://www.veritaszim.net/node/5844>.

¹⁴⁶ United Nations General Assembly International Covenant on Civil and Political Rights, 16 December 1966 available at: <https://www.refworld.org/docid/3ae6b3aa0.html>. Zimbabwe ratified the ICCPR in 1991.

¹⁴⁷ Organization of African Unity (OAU), African Charter on Human and Peoples' Rights 27 June 1981 available at: <https://www.refworld.org/docid/3ae6b3630.html>. Zimbabwe ratified the ACHPR in 1986.

¹⁴⁸ Constitution section 61, ICCPR article 19 and ACHPR article 9.

¹⁴⁹ Constitution section 68. Although the ICCPR and the ACHPR do not have provisions that specifically address administrative justice, they do provide for the right to equality before the law through articles 26 and 3 respectively.

¹⁵⁰ Constitution section 67, ICCPR article 25, ACHPR article 13.

¹⁵¹ Constitution section 58, ICCPR article 22 and ACHPR article 10.

¹⁵² Zimbabwe Human Rights Association (n17) 10.

¹⁵³ United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998) A/RES/53/144 article 5 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>.

¹⁵⁴ United Nations Human Rights Council 'Report of the Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association' (2012) UN DOC A/HRC/20/27 para 16 available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf.

necessary to achieve a legitimate objective.¹⁵⁵ Finally, the last criterion is that the limitation must further a legitimate aim. The legitimate aim must fall into the following categories: the interests of national security or public safety, public order; or the protection of public health or morals; or the protection of the rights and freedoms of others.¹⁵⁶ The criteria set out for limiting the right to association in the ICCPR are also applicable to the ACHPR.¹⁵⁷ Given the importance of the right to freedom of association, these criteria must be strictly applied to the PVO Bill to ensure that it is not abused to unduly limit the enjoyment of this right. It is, therefore, important to emphasise that though the PVO Act may be amended to ensure compliance with the FATF's Recommendations, this must be done in compliance with international human rights standards.

4. Analysis of the PVO Bill

After the PVO Bill was gazetted in 2021, the Parliamentary Portfolio Committee on Public Service, Labour, and Social Welfare conducted public hearings between 28 February and 4 March 2022 at 14 different venues across the 10 provinces of Zimbabwe.¹⁵⁸ Thereafter, the PVO Bill underwent its first reading in Parliament. On 8 June 2022, the Minister of Public Service, Labour, and Social Welfare published a list of proposed amendments to the PVO Bill.¹⁵⁹ It is this version of the PVO Bill that underwent the second reading in Parliament on 26 July 2022 and will be passed if no further amendments are made.¹⁶⁰ Therefore, this paper analyses this version focusing on the provisions that raise the most pertinent human rights concerns.

¹⁵⁵ As above para 17.

¹⁵⁶ As above.

¹⁵⁷ African Commission on Human and Peoples' Rights Guidelines on Freedom of Association and Assembly in Africa (ACHPR FOAA Guidelines) para 24 available at https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf.

¹⁵⁸ Parliamentary Portfolio Committee On Public Service, Labour And Social Welfare 'Report Of The On Public Consultations On The Private Voluntary Organisations Amendment Bill' (2022) available at https://www.veritaszim.net/sites/veritas_d/files/REPORT%20OF%20THE%20PORTFOLIO%20COMMITTEE%20ON%20PUBLIC%20SERVICE%2C%20LABOUR%20AND%20SOCIAL%20WELFARE%20ON%20PUBLIC%20CONSULTATION%20ON%20THE%20PRIVATE%20VOLUNTARY%20ORGANISATIONS%20AMENDMENT%20BILL.pdf.

¹⁵⁹ Veritas 'Bill Watch 26/2022 The Private Voluntary Organisations Amendment Bill: The Minister's Proposed Amendments' (2022) available at <http://www.veritaszim.net/node/5725>.

¹⁶⁰ Available at http://www.veritaszim.net/sites/veritas_d/files/PRIVATE%20VOLUNTARY%20ORGANISATIONS%20AMENDMENT%20BILL%20with%20Committee%20Stage%20Amendments.pdf

4.1. Purpose of the PVO Bill

The first purpose of the PVO Bill is to comply with the FATF recommendations. FATF is an inter-governmental organisation that was established in 1989 as ‘a global watchdog against money laundering and terrorist financing.’¹⁶¹ It formulated the FATF Recommendations to help countries prevent these illegal activities. In 2016, Zimbabwe was found to be non-compliant with Recommendation 8 as it was not adequately monitoring NPOs for possible misuse by terrorists.¹⁶² In 2019, Zimbabwe became partially compliant after it undertook a risk assessment of the NPO sector and identified six NPOs that dealt with religion and vulnerable children as posing a high risk.¹⁶³ It is indisputable that Zimbabwe needs to mitigate NPOs’ terrorist financing risk. However, the PVO Bill assumes that all NPOs in Zimbabwe are high-risk and targets them all. This is contrary to the expectation that the measures taken be focused and not a ‘one size fits all’ for NPOs.¹⁶⁴

The second purpose of the PVO Bill is to streamline administrative procedures for PVOs. This purpose is not explained, and no further details are provided, which is puzzling given the amount of detail provided to justify the first purpose. It thus arguably has no basis and may have been included just to give the appearance that the Bill is necessary. The final purpose of the PVO Bill is to ensure that PVOs do not undertake political lobbying. This purpose is stated last almost as if it was an afterthought.¹⁶⁵ However, given the state of CSO/state relations, it is arguably the primary purpose of the Bill. Concerningly, the term political lobbying is not defined nor explained which makes the stated purpose vague. With these three purposes in mind, the Bill must be considered to evaluate if it does not excessively restrict the enjoyment of rights based on these stated aims.

¹⁶¹ Veritas ‘Bill Watch 74/2021: The Private Voluntary Organisations Amendment Bill Part 2: The Contents of the Bill’ (2021) (2021) available at <https://www.veritaszim.net/node/5352>.

¹⁶² Eastern and Southern Africa Anti-Money Laundering Group ‘Zimbabwe: Mutual Evaluation Report’ (2016) 129 available at [https://www.esaamlg.org/reports/2ND-ROUND-MUTUAL-EVALUATION-REPORT-OF-THE-REPUBLIC-OF-ZIMBABWE\(1\).pdf](https://www.esaamlg.org/reports/2ND-ROUND-MUTUAL-EVALUATION-REPORT-OF-THE-REPUBLIC-OF-ZIMBABWE(1).pdf).

¹⁶³ Eastern and Southern Africa Anti-Money Laundering Group ‘Zimbabwe: Mutual Evaluation Report’ (2019) 11 available at <https://www.esaamlg.org/reports/FUR%20Zimbabwe-September%202019.pdf>.

¹⁶⁴ Communique by the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Ref.: OL ZWE 3/2021 (2021) available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26903>.

¹⁶⁵ Veritas (n161).

4.2. Definition of PVOs

The PVO Bill proposes to widen the scope of entities that may be regulated as PVOs to include trusts and universities.¹⁶⁶ Trusts specifically are barred from using donor or public funds to support their CSO work if they are not registered as a PVO.¹⁶⁷ If passed, the Bill will ensure that organisations not previously required to register as PVOs will now be required to do so. This is contrary to international standards which dictate that ‘newly adopted laws must not require previously registered organisations to re-register.’¹⁶⁸ These standards prevent the passing of new laws to retaliate against existing organisations through arbitrary rejection of their applications for registration or deliberate delays in finalising their registration to hinder their activities.¹⁶⁹ Furthermore, by registering as PVOs, trusts will be regulated under two different regulatory regimes with different compliance requirements which is irregular. The GoZ has not indicated any intention to amend the law under which trusts are currently regulated, hence this irregularity. During his country visit to Zimbabwe in 2020, the UN Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association noted that despite it being more expensive, some CSOs preferred to register as trusts because ‘it is more expeditious and allows associations greater flexibility to work on different issues.’¹⁷⁰ This has ensured that these CSOs are not subjected to the heavy controls imposed by the PVO Act. The widening of the definition of PVOs, therefore, is an attempt to bring these organisations into a regulatory regime that the GoZ controls.

The PVO Bill introduces a new provision in section 2(3) which gives the Minister the power to designate any legal person, legal arrangement, body, or association of persons, or institution to register as a PVO if they are deemed to be vulnerable to terrorist financing. Furthermore, the Minister is empowered to prescribe measures to be taken by that entity to mitigate its risk. Essentially, this provision seeks to make the PVO Bill applicable to any legal entity or person. The first issue of concern is that the Bill does not define what is meant by any legal person, legal arrangement, body, association of persons, or institution and the consequence is that the provision is potentially applicable to every association.¹⁷¹ This seems to be deliberately

¹⁶⁶ Southern Africa Human Rights Defenders Network (n27) 4.

¹⁶⁷ PVO Bill, section 6(2).

¹⁶⁸ United Nations Human Rights Council (n154) para 62.

¹⁶⁹ International Center for Not-for-Profit Law (n135) 9.

¹⁷⁰ United Nations Human Rights Council ‘Special Rapporteur on the rights to freedom of peaceful assembly and of association: Zimbabwe Country Visit Report’ (2020) A/HRC/44/50/Add.2 para 94 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/121/31/PDF/G2012131.pdf?OpenElement>.

¹⁷¹ International Center for Not-for-Profit Law (n135) 6.

done to avoid the current situation in which associations that take different legal forms can be CSOs but not PVOs. The consequences of the lack of precise definitions in this section betray the GoZ's desire to control all CSOs. This provision also empowers the Minister to designate any entity as being high-risk without conducting a risk assessment, making it unclear what would inform the designation. The lack of a requirement for a risk assessment before the designation is done is specifically concerning given that the Minister can then impose any mitigatory conditions on the entity designated as high-risk. The Minister is also not obligated to give notice or consider submissions from an entity before designating it as high risk. This denies the designated entities due process and specifically violates their right to procedurally fair administrative conduct in contravention of section 68 of the Constitution.¹⁷² The Minister has broad powers in this regard and limiting the entity's right to freedom of association without subjecting the entity to a risk assessment is unjustifiable. This is because for this limit to be justifiable, there must not be any less restrictive alternatives and in this case, conducting a risk assessment first would be less restrictive.¹⁷³

4.3. Mandatory Registration

The PVO Bill in section 6 provides for mandatory registration of all PVOs as defined in section 2 and entities designated as high risk for terrorist financing. The Registrar of PVOs has sole discretion in deciding whether to register a PVO.¹⁷⁴ Although PVOs may appeal the decision to the Minister per section 14, the Minister only has review powers to set aside a decision on procedural grounds such as that the decision was biased or grossly unreasonable.¹⁷⁵ As a result of the Minister's limited review powers, the Registrar's decision is final. However, because the provision does not expressly oust the jurisdiction of the courts, the PVO may still challenge the decision in the courts based on their right to administrative justice per section 68 of the Constitution. The PVO Bill further introduces an unstipulated registration fee.¹⁷⁶ The ACHPR FOAA Guidelines emphasise that while a registration fee may be imposed, it must be 'imposed to cover administration fees, provided that this fee is modest and does not have the effect of deterring associations from registering in practice.'¹⁷⁷ The requirement for a registration fee is

¹⁷² Veritas (n161).

¹⁷³ International Center for Not-for-Profit Law (n135) 6.

¹⁷⁴ PVO Bill, section 9.

¹⁷⁵ Veritas (n159).

¹⁷⁶ Section 9(1)(a).

¹⁷⁷ ACHPR FOAA Guidelines (n157) para 18.

not inherently problematic but the GoZ must impose a reasonable fee that will not be a barrier to registration.

4.4. Reregistration after Material Change

The PVO Bill proposes to introduce section 13A to provide for the re-registration of PVOs after a material change in the particulars submitted upon initial registration. A material change is defined as any change in the constitution, ownership, and control or capacity to operate as a PVO.¹⁷⁸ In response to the application to re-register, the Registrar may grant the application, reject it, and order reversal of the material change or reject it and require re-registration.¹⁷⁹ The term 'material change' is so broadly defined making it vague and compliance difficult. The wording of the provision suggests that any change to the constitution regardless of its implications would be material, as would any change in the composition of the board. Essentially, PVOs would need the approval of the Registrar to change their internal operations. This contravenes the ACHPR FOAA Guidelines, which state that associations must not be required to obtain permission from the authorities to change their internal management structure or other elements of their internal rules.¹⁸⁰ Ultimately, this provision gives the Registrar the power to stop PVOs from changing how they operate. This is because if they make changes that the Registrar does not approve, the changes may be construed as material changes and result in rejection of applications for re-registration regardless of how material the change is to the PVO's operations.

The requirement that PVOs re-register after a material change is contrary to international standards. According to the African Commission on Human and Peoples' Rights, associations must not be required to register more than once.¹⁸¹ The UN has also emphasised the need for states to avoid putting in place regulations that provide for re-registration.¹⁸² Re-registration requirements expose organisations and associations which are deemed to be problematic to abuses of power through rejections of applications for re-registration. The GoZ has made no secret of its disdain for human rights and governance CSOs, thus it is most likely that this provision would be used to target them.

¹⁷⁸PVO Bill, section 13A(1).

¹⁷⁹PVO Bill, section 13A(3).

¹⁸⁰ ACHPR FOAA Guidelines (n157) para 36(b).

¹⁸¹ ACHPR FOAA Guidelines (n157) para 17.

¹⁸² United Nations Human Rights Council Resolution for Protecting human rights defenders (2013) A/HRC/Res/22/6 para 8 available at <https://www.right-docs.org/download/5031/>.

The Registrar has unfettered power when considering the applications for re-registration and they are not required to explain their decision to the PVO.¹⁸³ The omission of a provision obligating the Registrar to provide written reasons for an adverse decision violates the right to administrative justice. Thus, this section can be deemed unconstitutional to the extent that it permits the Registrar to make adverse decisions without promptly giving written reasons. The International Center for Not-for-Profit Law has argued that the PVO Bill is remiss by not providing for judicial oversight on the exercise of the Registrar's powers.¹⁸⁴ While this would admittedly be ideal, it should be noted that although this provision does not specifically provide for PVOs to appeal a decision to reject an application for reregistration, it does not expressly oust the jurisdiction of the courts either. As a result, PVOs who are adversely affected by the Registrar's decision may approach the courts alleging that the Registrar's conduct was not lawful, prompt, efficient, reasonable, proportionate, impartial, and both substantively and procedurally fair based on section 68 of the Constitution. By not ousting the jurisdiction of the courts, the PVO Bill adheres to the principle that associations whose applications are rejected should have the opportunity to challenge the decision before the courts if they so wish.¹⁸⁵

4.5. Powers of the Registrar

The PVO Bill does away with the PVO Board and gives the Office of the Registrar of PVOs headed by the Registrar the mandate of supervising and directing the proper administration of the PVO Act.¹⁸⁶ The powers of the Registrar are provided for in section 3(3) and include considering and determining 'every application for registration and every proposed cancellation or amendment of a certificate of registration.' The PVO Bill removes the PVO Board, which included in its composition five PVO representatives, and vests its powers in one individual who is a government employee and will be under the control of the Minister. Erasure of the PVO Board and transfer of its powers to the Registrar is undemocratic particularly because the PVO Board, though not perfect, did facilitate some PVO representation in the process of consideration of registration applications.¹⁸⁷ Although regulatory practices and designs may differ from country to country, the UN Special Rapporteurs argue that oversight bodies should be designed in a

¹⁸³ International Center for Not-for-Profit Law (n135) 7.

¹⁸⁴ International Center for Not-for-Profit Law (n135) 8.

¹⁸⁵ United Nations Human Rights Council (n154) para 61.

¹⁸⁶ PVO Bill, section 3.

¹⁸⁷ Veritas (n159).

way that can effectively facilitate the rights to freedom of association in a professional, consistent and apolitical manner.¹⁸⁸ In this regard, the Special Rapporteur on Freedom of Peaceful Assembly and Association has also stressed the need for the oversight body to be independent of executive power to ensure that its decisions are not arbitrary.¹⁸⁹ The Registrar reports to the Minister who reports to the President who has previously publicly denounced human rights and governance CSOs in particular. Therefore, it is inconceivable that the Registrar would discharge their duties independently.

4.6. Suspension of Executive Committee

The PVO Bill replaces section 21 of the PVO Act with a new provision that empowers the Minister to suspend the executive committee of any PVO. The grounds given for exercising this power are that: (a) the organisation's operations are no longer in line with the objects stated in its constitution; (b) there is maladministration affecting the activities of the organisation; (c) there are ongoing illegal activities; (d) it serves the public interest to do so.¹⁹⁰ Once the Minister is satisfied that these grounds are met they can apply to the High Court to appoint trustees to run the organisation for not more than 60 days pending the election of new executive committee members.¹⁹¹ While the High Court considers the application, the Minister may appoint a provisional trustee who will earn a salary paid by the organisation.¹⁹² If the High Court does not grant the application, the actions taken by the provisional trustee will remain valid provided they acted in good faith.¹⁹³

Several issues arise from this provision. First, the provision gives the Minister the power to appoint provisional trustees without an opportunity for a hearing for the PVO and its Executive Committee. In 1997, the Supreme Court considered a similar provision and ruled that the Minister's power to suspend executive committee members of a PVO in this way violated their rights to a fair hearing.¹⁹⁴ Although the provisional trustee would only be appointed pending the High Court's ruling, the power to provisionally suspend the committee still violates the

¹⁸⁸ Communiqué (n164).

¹⁸⁹ United Nations Human Rights Council 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' (2013) A/HRC/23/39 para 38 available at <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39.EN.pdf>.

¹⁹⁰ PVO Bill, section 21(1)(a-d).

¹⁹¹ PVO Bill, section 21(1)(e-f).

¹⁹² PVO Bill, section 21(7).

¹⁹³ PVO Bill, section 21(3).

¹⁹⁴ *Holland and Ors v Minister of the Public Service and Ors* 1997 (1) ZLR 186 (S).

rights of those affected contrary to the Supreme Court ruling. Granting the Minister power to appoint a trustee with unfettered access to the PVOs even on a provisional basis is dangerous given the state of relations between the GoZ and CSOs. There is a risk that the provisional trustees 'may be misused to disrupt or infiltrate organisations to gain information and stifle their operations' while the court ruling is pending.¹⁹⁵ This may initially seem like a concern borne out of paranoia, but the GoZ has often been implicated in serious human rights violations and PVOs may have confidential information relating to those violations. Therefore, the concerns about infiltration are well-founded. Additionally, PVOs are sometimes at risk of attacks from the GoZ themselves and may have confidential security information to protect themselves against such attacks. The provisional trustees may access and expose that information. Essentially, this appointment of provisional trustees exposes PVOs to information leaks that may be carried out and completed by the time the High Court has ruled on the Minister's application.¹⁹⁶

Granting the Minister, the power to appoint trustees for the PVOs enables government interference with the internal working of PVOs. This is contrary to international best practice which discourages state interference in the organisational choices of managing officers provided the organisation's preferred officers are not barred from holding their positions by national laws.¹⁹⁷ The imposition of trustees to oversee the operations of a PVO pending the election of new executive committee members unjustifiably restricts the PVO's right to association. This is because the PVO is compelled to associate with the imposed trustees whom it does not participate in appointing. This restriction cannot be justified where less restrictive means would achieve the same purpose. In this case, the purpose would be to stop members of the executive committee from being in charge of the PVO's operations due to the breaches provided in section 21(1)(a-d). This purpose can still be achieved if instead of imposing trustees, the Minister requires the PVO to elect trustees within a certain period. This would enable the PVO to continue to enjoy its right to freedom of association in a less restrictive manner.

¹⁹⁵ Southern Africa Human Rights Defenders Network (n27) 6.

¹⁹⁶ As above.

¹⁹⁷ ACHPR FOAA Guidelines (n157) para36(c).

The third issue that arises from this section 21 is that the grounds upon which suspension may be warranted are unclear, which makes it difficult for PVOs to know the circumstances under which their executive committees may be suspended.¹⁹⁸ Maladministration and public interest are not defined in this section and many acts could be construed as falling under either ground. Given the strained relations between the state and CSOs, a more precise provision would be ideal so that CSOs can be guided accordingly in their operations. Clarity would also protect CSOs from arbitrary suspensions by the Minister who would have to meet very detailed requirements before applying to suspend any executive committee. In its current state, this provision fails the test for limiting the right to freedom of association because the law is unclear and uncertain, contrary to rule of law principles.¹⁹⁹ Therefore, this limitation cannot be justified in a democracy such as Zimbabwe.

4.7. Risk Assessment

The PVO Bill repeals section 22 in its entirety and replaces it with a new provision that addresses the issue of risk assessment for terrorist financing and money laundering. This provision empowers the Minister in cooperation with the Financial Intelligence Unit to undertake a risk assessment of all PVOs not less than once every five years.²⁰⁰ The identified organisations are given 14 days within which to make submissions to the Minister if they believe they were erroneously designated as high risk or that the measures to be taken are unreasonable or disproportionate to their risk.²⁰¹ After designating an entity as high risk for terrorist financing, the Minister can direct it to take any measures to mitigate the risk as long as those measures do not violate the PVO Bill.²⁰²

Interestingly, the Minister is not required to engage PVOs in the risk assessment process. This contravenes the FATF Recommendations which require that states work with NPOs 'to develop and refine best practices to address terrorist financing risks and vulnerabilities and thus protect them from terrorist financing abuse.'²⁰³ The FATF recommends that NPOs be consulted during the risk assessment process and refers to examples of where this has been done such

¹⁹⁸ International Center for Not-for-Profit Law (n135) 8.

¹⁹⁹ As above.

²⁰⁰ PVO Bill, section 22(2).

²⁰¹ PVO Bill, section 22(4).

²⁰² PVO Bill, section 22(5)

²⁰³ Financial Action Task Force 'International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation' (2012) 60 available at <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/fatf%20recommendations%202012.pdf>.

as in Malaysia where NPOs and academia participated in the process of validating the findings of a risk assessment conducted on NPOs.²⁰⁴ Participation of PVOs in the risk assessment process is crucial because they are best placed to inform the Minister about how they raise funds, identify possible risks that come with their fund-raising processes, and recommend practical solutions to mitigate the risks.²⁰⁵ By not expressly providing for the role to be played by PVOs in the risk assessment process, the PVO Bill reflects a desire to simply consolidate power and centre it on the Minister and not to build a working partnership between the GoZ and PVOs.

4.8.Limitation of PVO Activities

The PVO Bill proposes a new provision in section 23(4)(a) to bar PVOs from supporting or opposing political parties or candidates in presidential, parliamentary, or local government elections. The Bill does not define the words ‘support’ or ‘oppose’ rendering it vague.²⁰⁶ This vagueness is significant because it subjects the law to abuse through selective application towards different PVOs. Those viewed by the GoZ as regime change agents may be labelled as ‘supporting’ political parties for legitimate activities like speaking out against human rights violations and providing legal representation to political parties or candidates subjected to rights violations.²⁰⁷ The Special Rapporteur on the Right to Peaceful Assembly and Association has raised concerns that regulations relating to organisations’ engagements with political activities may be used in a malafide manner to interfere with the undertaking of legitimate governance and rule of law initiatives that a government disapproves of.²⁰⁸ Section 23 as amended in the PVO Bill is a classic example of a law that is crafted to facilitate such action by the GoZ.

The attempt to control PVO interactions with political parties and candidates violates the right to freedom of association which extends to associating for political purposes. This is further reinforced by section 67 which guarantees political rights. According to the Special Rapporteur on the Right to Peaceful Assembly and Association, associations have the right to freely

²⁰⁴ Financial Action Task Force ‘Terrorist Financing Risk Assessment Guidance’ (2019) para 68 available at <https://www.fatf-gafi.org/media/fatf/documents/reports/Terrorist-Financing-Risk-Assessment-Guidance.pdf>.

²⁰⁵ International Center for Not-for-Profit Law (n135) 5.

²⁰⁶ International Center for Not-for-Profit Law (n135) 10.

²⁰⁷ Communique (n164).

²⁰⁸ United Nations General Assembly ‘Report on Rights to freedom of peaceful assembly and of association’ (2013) A/68/299 para 44 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/423/09/PDF/N1342309.pdf?OpenElement>.

participate in activities related to the electoral process including advocating for electoral and broader policy reforms.²⁰⁹ Thus, regulation must seek to ensure transparency regarding a PVO's support of a certain party or candidate and not prohibit it.²¹⁰ This prohibitive provision fails the test for limiting rights because it is too broad making it impossible for PVOs to decipher what conduct would amount to support or opposition of a candidate or party.²¹¹ This makes it impossible for them to comply and it is not a justifiable limit in a democratic society.

4.9. Sanctions and Penalties

The PVO Bill imposes monetary fines or one-year prison terms for offences such as supporting or opposing political parties or election candidates.²¹² These hefty sanctions are imposed contrary to best international standards that require that 'states avoid imposing monetary sanctions and imprisonment for violation of laws governing organisations.'²¹³ Instead, states are encouraged to permit organisations to remedy non-compliance through full compliance, alternatively states may issue warnings which if not heeded may be followed by the imposition of the heftier sanctions.²¹⁴ The PVO Bill does not take this approach but provides one opportunity for compliance failing which one can be deemed to have contravened the law, tried, and if guilty they may be fined or imprisoned. Another legal principle that the Bill does not adhere to is that sanctions must be proportionate to the offence committed.²¹⁵ Section 22(7) empowers the Minister to revoke the certificate of registration of a PVO which does not comply with the Minister's directions on how to mitigate its terrorist financing risk. Given that these directions may require PVOs to provide regular reports, the sanction imposed for non-compliance may be disproportionate depending on the consequences of the non-compliance. Penalties for non-compliance concerning the submission of reports and other similar requirements must not be harsher for PVOs than they are for businesses that commit similar offences.²¹⁶

²⁰⁹ As above.

²¹⁰ As above para 46.

²¹¹ International Center for Not-for-Profit Law (n135) 11.

²¹² Section 23(4).

²¹³ ACHPR FOAA Guidelines (n157) para59(b).

²¹⁴ As above.

²¹⁵ Viktor Korneenko et al. v. Belarus, Communication No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004 (2006). Para 7.6 <http://hrlibrary.umn.edu/undocs/1274-2004.html>

²¹⁶ Communiqué (n164).

Additionally, the PVO Bill introduces a new Schedule to be used by the Registrar to issue civil penalties for contravention of the provisions of the PVO Act.²¹⁷ What is striking in this Schedule is that when a civil penalty order is issued, the PVO has the burden of proof to show that it was issued in error.²¹⁸ This is inconsistent with the well-established legal principle that he who alleges must prove. In the case of the imposition of sanctions against associations, the African Commission has stated that ‘the burden of proof relative to sanctions against associations shall always be on the state.’²¹⁹ Therefore, the Registrar must have the burden to prove non-compliance if a PVO challenges the issuance of a civil penalty order.

5. Conclusion

The above analysis shows that there are significant human rights issues in the PVO Bill in its current form. The right to freedom of association is severely undermined by the highlighted provisions. Given that the PVO Bill has been introduced in a highly polarised pre-election environment, the limitations it proposes to impose on CSOs are a grave concern.²²⁰ These limitations are likely to cripple human rights CSOs before, during, and after elections when they may be needed most. Although the aim of complying with the FATF Recommendations seems legitimate, the provisions relating to this purpose are unnecessarily intrusive and they do not comply with the FATF’s recommendation that states and NPOs work together to ensure compliance. Therefore, it appears the GoZ, through the PVO Bill, seeks to use the need to comply with the FATF Recommendations to torpedo CSOs or destabilise their operations just as it did in 2004 with the NGO Bill. The discussion above shows that the proposed amendments are too restrictive to be justifiable in a democratic society. Furthermore, history has shown that the GoZ views human rights work as political, therefore, the PVO Bill is arguably targeted at bringing an end to CSO involvement in human rights work and reducing the number of CSOs operating in Zimbabwe. Given the concerns regarding the PVO Bill, there is a need to consider practices from other countries to make recommendations for more human rights-compliant regulation of CSOs in Zimbabwe.

²¹⁷ PVO Bill Schedule, section 2.

²¹⁸ PVO Bill Schedule, section 3(4)(d).

²¹⁹ ACHPR FOAA Guidelines (n157) para 61.

²²⁰ Zimbabwe Coalition on Debt and Development ‘Private Voluntary Organisations Amendment Bill –The dearth of Democracy in Zimbabwe’ (2022) available at https://zimcodd.org/?smd_process_download=1&download_id=5355.

CHAPTER 4: CIVIL SOCIETY REGULATION IN KENYA

1. Introduction

CSOs in Kenya are made up of entities that take up different legal forms namely non-governmental organisations (NGOs),²²¹ trusts,²²² companies limited by guarantee,²²³ and societies.²²⁴ There is regulatory pluralism in Kenya allowing CSOs to choose the system under which to be regulated.²²⁵ Civil society in Kenya is hailed for being one of Africa's most vocal and this has been enhanced by the Constitution of Kenya, 2010²²⁶ which guarantees the rights of freedom of association and expression among other fundamental rights.²²⁷ The constitutional protection of these rights has enabled CSOs in Kenya to be more vigilant in their efforts to hold the government and national institutions accountable for any breaches.²²⁸ In Kenya, just like in Zimbabwe, the current relationship between the state and civil society is one characterised by suspicion and apprehension.²²⁹ One of the reasons for this is that in the 2007 post-election period, there were International Criminal Court cases against former President Uhuru Kenyatta and the current President William Ruto, which the Government of Kenya (GoK) attributed to the intervention of CSOs.²³⁰ During his first hearing before the ICC President Ruto stated that 'NGOs should stop interfering with government issues by writing letters to their donors to support the ICC intervention as it was none of their business.'²³¹ With this understanding of CSOs' operating context in Kenya, this chapter focuses on the regulatory framework, particularly the

²²¹ Regulated under the NGO Co-Ordination Act No. 19 of 1990.

²²² Regulated under the Registration of Documents Act CAP 285 and the Trustees (Perpetual Succession) Act, CAP 164.

²²³ Regulated under the regulated under the Companies Act, CAP 486.

²²⁴ Regulated under the Societies Act, CAP 108.

²²⁵ AJ DeMatte 'Domesticating Civil Society: How and Why Governments Use Laws to Regulate CSOs' (2020) 210 available at <https://scholarworks.iu.edu/dspace/bitstream/handle/2022/25813/DeMattee%20Dissertation%20ProQuest%20Formatting%20Revisions%2020200914.pdf?sequence=1&isAllowed=y>.

²²⁶ Constitution of Kenya, 27 August 2010, available at: <https://www.refworld.org/docid/4c8508822.html>.

²²⁷ Collaboration on International ICT Policy in East and Southern Africa 'Legal and Regulatory Frameworks Affecting Civil Society Organisations' Online and Offline Activities in Kenya' (2017) 1 available at https://cipesa.org/?wpfb_dl=247.

²²⁸ As above.

²²⁹ 'Kenya: Think Again – Civil Society in Kenya is Down, but not Out' AllAfrica 5 January 2016 available at <http://allafrica.com/stories/201601050964.html>.

²³⁰ H Smidt 'Shrinking Civic Space in Africa: When Governments Crack Down on Civil Society' (2018) *German Institute of Global and Area Studies Focus Afrika* 6 available at https://www.ssoar.info/ssoar/bitstream/handle/document/60572/ssoar-2018-smidt-Shrinking_Civic_Space_in_Africa.pdf;jsessionid=226468B247BDFAAA7D14CD1DEEEF1BCB?sequence=1.

²³¹ Human Rights Watch 'Kenya: Rights Defenders under Attack' (4 October 2013) available at <https://www.hrw.org/news/2013/10/04/kenya-rights-defenders-under-attack>.

positive aspects from which lessons can be drawn for Zimbabwe. The rationale for choosing Kenya as the focus of this chapter is provided below followed by an overview of the regulatory framework and an analysis of the law.

1.1. Rationale for Focus on Kenya

Kenya is the case study for this chapter because it provides a policy and legislative model for other countries.²³² The enactment of the Constitution of Zimbabwe, 2013 which borrows heavily from the Kenyan and South African constitutions proves this to be true. Kenya is also the comparative choice because its socio-economic history and political realities are arguably a replica of the Zimbabwean experience.²³³ Kenya and Zimbabwe have similarities in their colonial legacy, violent elections that resulted in the establishment of power-sharing governments, widespread corruption, and demands for electoral reforms among others.²³⁴ Finally, the strained relations between CSOs and the GoK mirror the situation in Zimbabwe. This is attributable to the continuing human rights violations despite CSOs' calls for reform which have prompted CSOs to adopt a confrontational approach.²³⁵ As has been done in Zimbabwe, in response to CSO demands for accountability the GoK has conducted public negative branding of CSOs alleging that they are promoters of foreign interests.²³⁶ Additionally, the GoK has used the real threats of terrorism that Kenyans face to clamp down on CSOs on the pretext of implementation of anti-terrorism measures.²³⁷ For these reasons, Kenya is the ideal country for Zimbabwe to learn from.

2. CSO Regulation in Kenya

2.1. Regulation Under President Jomo Kenyatta (1964 - 1978)

Kenyatta was the first Kenyan president after the end of colonialism and thus inherited the British legal system which permitted the establishment of CSOs that worked to promote leisure and social welfare.²³⁸ The regulatory laws he inherited were the Trustees Ordinance 12 of 1923, the Societies Ordinance 52 of 1952, and the Companies Ordinance 50 of 1959.²³⁹ Kenyatta

²³² J Wood 'Overseeing Kenyan Civil Society: Understanding Regulatory Waves' (2016) 6 available at https://cdn.ymaws.com/www.istr.org/resource/resmgr/WP_Stockholm/Regulatory_Waves_Kenya_Wood.pdf.

²³³ Massimo and Makwerere (n9) 10.

²³⁴ S Marumahoko 'The Constitutional Processes in Kenya and Zimbabwe: A Comparative Perspective' (2018) 16 *Strategic Review for Southern Africa; Pretoria* Vol. 40, Issue 2 available at <https://www.proquest.com/docview/2216722491?pq-origsite=gscholar&fromopenview=true>.

²³⁵ As above.

²³⁶ Wood (n232) 12.

²³⁷ Smidt (n230) 4.

²³⁸ DeMatte (n225) 182.

²³⁹ As above.

embraced CSOs and worked with them in their different legal forms. DeMatte argues that although Kenyatta seemingly embraced CSOs, he only did so to the extent that they were valuable economic and development partners, and he did not allow them to outgrow his control.²⁴⁰ This resembles the approach that was taken by the Zimbabwean government in the first decade after independence.

2.2. Regulation Under President Moi (1978 - 2002)

Under President Moi who was an authoritarian leader under whose rule human rights violations were commonplace, state and CSO relations were bound to sour.²⁴¹ Perhaps the most significant change that Moi introduced was the enactment of the NGO Coordination Act in 1990 (NGO Act). This change was hardly surprising because ‘by December 1986, Moi had become uncomfortable with CSOs, claiming they were involved in “subversive” activities to undermine the government.’²⁴² Given Moi’s growing hostility against CSOs, one may have expected this law to have been repressive. However, it was more permissive than repressive because it encouraged self-regulation,²⁴³ established an oversight body to prevent abuse and corruption by the regulator,²⁴⁴ and minimised operating requirements for organisations registered under it.²⁴⁵ Furthermore, the Repeal and Miscellaneous Amendments Act 14 of 1991 made the NGO Act more permissive by removing the requirement for registration renewal every five years. However, the NGO Act had some repressive provisions as well. The composition of the oversight body it created could be manipulated by the GoK to have more government-appointed members,²⁴⁶ the Minister had broad powers to set fees unilaterally,²⁴⁷ and set new rules to govern the CSO sector.²⁴⁸ Although the regulatory law under President Moi’s rule was more permissive than restrictive, its application was not uniform hence it was at times used close civic space more than open it.

²⁴⁰ DeMatte (n225) 189.

²⁴¹ KG Adar and IM Munyae IM ‘Human Rights Abuse in Kenya Under Daniel Arap Moi, 1978-2001’ (2001) 2 *African Studies Quarterly Journal* Volume 5, Issue 1 available at <https://asq.africa.ufl.edu/wp-content/uploads/sites/168/Adar-Munyae-Vol-5-Issue-1.pdf>.

²⁴² J Brass ‘Kenya as case study: Historical portraits of NGOs and the state’ in *Allies or Adversaries: NGOs and the State in Africa* (2016) available at <https://www.cambridge.org/core/books/allies-or-adversaries/kenya-as-case-study/F93B8B8FDFE0AA1F8A7B78CE256857E4>.

²⁴³ Sections 23 and 24.

²⁴⁴ Sections 3 – 9.

²⁴⁵ Section 12.

²⁴⁶ section 4(1).

²⁴⁷ Section 11.

²⁴⁸ Section 32.

2.3. Regulation Under President Kibaki (2002 - 2013)

President Kibaki focused more on rebuilding state and CSO relations and even appointed some CSO leaders to government positions in his quest to do so.²⁴⁹ As a result, under Kibaki's rule, Brass argues that CSOs adopted a more consultative and not confrontational approach.²⁵⁰ Although for most of his time in office he did not change the legal framework left by Moi, in January 2013, just months before Kibaki left office, he enacted the Public Benefits Organisations Act 18 of 2013 (PBO Act). This law was set to drastically change CSO regulation in Kenya and had broad support from CSOs.²⁵¹ The PBO Act also provided for self-regulation²⁵² but included new permissive provisions such as requiring the regulator to make decisions on applications for registration within 60 days and notify the applicants.²⁵³ The PBO Act once operational was going to repeal the NGO Act.²⁵⁴ However, by the time Kibaki left office the PBO Act was not operational, and the responsibility of operationalising it fell on his successor President Kenyatta.²⁵⁵

2.4. Regulation Under President Uhuru Kenyatta (2013 – 2022)

When Uhuru Kenyatta came to power, it was expected that he would direct the Cabinet Secretary to operationalise the PBO Act per section 1 of the Act. However, by the time he left office, the Act had still not been operationalised.²⁵⁶ In the *Trusted Society of Human Rights Alliance v Cabinet Secretary Devolution and Planning & 3 others* case, the court held that the failure to provide a commencement date for the PBO Act violated the Constitution of Kenya.²⁵⁷ It ordered the respondent to comply, but this did not happen. Subsequently, the Truth and Justice and Trusted Society of Human Rights Alliance filed a challenge to the Supreme Court and the court held that the directive to operationalise the Act must be complied with but this was still not done.²⁵⁸ Instead by 2014, 54 amendments had been proposed to make the PBO Act

²⁴⁹ Brass (n242) 73.

²⁵⁰ Brass (n242) 74.

²⁵¹ DeMatte (n225) 207.

²⁵² Section 20 – 33.

²⁵³ Section 9(1).

²⁵⁴ Kenya Human Rights Commission (KHRC) 'Know Your Rights and Duties As a Civil Society Organisation Handbook' 8 available at <https://www.khrc.or.ke/civic-space-publications/163-know-your-rights-and-duties-as-a-civil-society-organisation-3/file.html>.

²⁵⁵ O Namwaya 'Long-Delayed Kenyan Law Should Make Life Easier for NGOs' (2016) available at <https://www.hrw.org/news/2016/09/21/long-delayed-kenyan-law-should-make-life-easier-ngos>.

²⁵⁶ The Observatory for the Protection of Human Rights Defenders 'Kenya After Years Of Broken Promises, Will The PBO Act Become More Than Paper Tiger?' (2018) 8 available at https://www.fidh.org/IMG/pdf/kenia_pbo_act_briefing_note.pdf.

²⁵⁷ *Trusted Society of Human Rights Alliance v Cabinet Secretary Devolution and Planning & 3 others* (2016) eKLR (Kenya High Court) available at <http://kenyalaw.org/caselaw/cases/view/128172>.

²⁵⁸ *Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and Planning & 3 others* (2017) eKLR (Kenya High Court) available at <http://kenyalaw.org/caselaw/cases/view/135653/>.

less permissive.²⁵⁹ One of the proposed changes was to limit external funding of PBOs to 15 percent of their total funding.²⁶⁰ Parliament rejected the proposed amendments in the Statute Law (Miscellaneous Amendments) Bill 2013.²⁶¹ The NGO Act thus remained in force and was at times enforced repressively. In 2014, the NGO Coordination Board imposed the severe sanction of de-registering 540 organisations for non-compliance with the law, accusing 15 of them of using their charitable status as a front for raising funds for terrorism.²⁶² In 2017, the NGO Coordination Board cracked down on CSOs such as Kura Yangu Sauti Yangu, We The People, and Kenya Human Rights Commission in retaliation for them publicly raising concern about the outcome of the 2017 elections.²⁶³ Throughout his time in office, Kenyatta lacked the political will to ensure the operationalisation of the PBO Act and now that responsibility lies with the newly elected President Ruto.

3. Analysis of the PBO Act

The PBO Act is the focus of this section because although not yet operational, it is progressive and complies with 'national and international standards and contributes to ensuring a transparent, efficient and accountable civil society sector.'²⁶⁴ Its objectives include promoting self-regulation, transparency, and good governance.²⁶⁵ It also stipulates that the GoK must respect the freedoms of association and assembly and provide an enabling environment for PBOs.²⁶⁶

3.1. Defining PBOs

PBOs are defined in section 5 of the Act as voluntary membership or non-membership grouping of individuals or organisations, which is autonomous, non-partisan, non-profit making, and engages in public benefit activities. Public benefit activities are defined as those that support or promote issues of public benefit such as economic, environmental, social, and any other

²⁵⁹ The Observatory for the Protection of Human Rights Defenders "Kenya: 2017 elections: Broken promises put human rights defenders at risk" (2017) 13 available at https://icj-kenya.org/?smd_process_download=1&download_id=4988.

²⁶⁰ Statute Law (Miscellaneous Amendments) Bill, 2013.

²⁶¹ 'MPs throw out Bill targeting NGOs' Nation 3 July 2013 available at <http://www.nation.co.ke/news/politics/MPs-throw-out-Bill-targeting-NGOs/-/1064/2099062/-/yestraz/-/index.html>.

²⁶² Y Niyiragira 'Current Challenges Facing The Civil Society In Kenya' (2015) available at https://www.rosalux.de/fileadmin/rls_uploads/pdfs/sonst_publicationen/rls-onl_current-challenges-kenya.pdf

²⁶³ 'ODM condemns NGOs crackdown, blames dictatorial Jubilee' Star 6 November 2017 available at <https://www.the-star.co.ke/news/2017-11-06-odm-condemns-ngos-crackdown-blames-dictatorial-jubilee/>.

²⁶⁴ The Observatory for the Protection of Human Rights Defenders (n256) 7.

²⁶⁵ Section 3.

²⁶⁶ Section 4.

public interest issues.²⁶⁷ Ochido views the PBO Act as a culmination of efforts to bring all CSOs in Kenya under one regulatory framework.²⁶⁸ David argues that section 6(2) introduces a new registration regime for PBOs that ensures that organisations registered under any other legal regime comply with the new legislation.²⁶⁹ Section 6(1) mandates registration under this Act for organisations that wish to enjoy the benefits contained therein. Further, section 6(2) states that no organisation shall be registered under the Act and retain its registration under another law. Ager takes the view that organisations working for the public benefit only lose their registration under other laws if they register under the PBO Act.²⁷⁰ This view is supported by Kelly who states that CSOs may register under other laws if applicable, but they will not receive the benefits provided under the PBO Act.²⁷¹ Ochido also concedes that although the PBO Act may bring all organisations working on public benefit issues under one regulatory framework, it does not curtail organisations' right to decide the legal form they wish to adopt.²⁷² Therefore, the PBO Act maintains regulatory pluralism but limits it by prescribing that for an organisation to enjoy the public benefit status and benefits, it must be registered as a PBO and forego registration under any other law.

Once operational, the PBO Act will repeal the NGO Act and NGOs will be deemed to be registered as PBOs and given a year from the operationalisation of the PBO Act to formalise that registration.²⁷³ If they do not, they shall lose the PBO status after thirty days.²⁷⁴ According to Ager these provisions may have far-reaching effects and prompt some organisations to adopt other organisational forms.²⁷⁵ While this is true, this paper posits that this provision is not inherently bad because it ensures that NGOs are not automatically deregistered when the PBO

²⁶⁷ Section 2(1).

²⁶⁸ H Ochido 'Review of the Public Benefit Organisations act 2013, Kenya' (2013) 37 *International Journal of Civil Society Law*, 11(1)

²⁶⁹ D David 'Regulating Non-Governmental Organisations In Kenya: A Critical Analysis Of The Corporate Governance System' (2017) 31 available at http://erepository.uonbi.ac.ke/bitstream/handle/11295/101413/Kalii_Regulating%20Non-governmental%20Organisations%20in%20Kenya-%20a%20Critical%20Analysis%20of%20the%20Corporate%20Governance%20System.pdf?sequence=1.

²⁷⁰ P Ager 'Out With the Old, in With the New: The Public Benefit Organizations Act' 2013 available at <https://www.oraro.co.ke/2018/06/27/out-with-the-old-in-with-the-new-the-public-benefit-organizations-act-2013/>.

²⁷¹ L Kelly 'Legislation on non-governmental organisations (NGOs) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda, England and Wales' (2019) 8 available at https://assets.publishing.service.gov.uk/media/5d9b558ded915d354c1af0ff/656_NGO_Legislation_East_Africa.pdf.

²⁷² Ochido (n268) 39.

²⁷³ Fifth Schedule, section 5(1).

²⁷⁴ Section 5(2).

²⁷⁵ Ager (n270).

Act becomes operational thus crippling their work. Instead, it provides them with PBO status for a year which they may formalise, or they may opt to take up a different legal form.

3.2. Registration

The PBO Act provides for mandatory registration of PBOs which is acceptable as it enables the organisations to create a legal identity. However, the emphasis must be on government officials acting in good faith when considering registration applications.²⁷⁶ Akin to the PVO Bill, the Act does not permit PBOs to fundraise or campaign to support or oppose any political party or candidate.²⁷⁷ However, it permits PBOs to conduct advocacy including criticism of policies and activities of the state, and to express views on issues discussed during a political campaign or election. In this way, the Act permits PBOs to exercise their rights to freedom of association and expression.

The Regulator reviews registration applications and must decide within 60 days.²⁷⁸ If they are not satisfied that the requirements have been met, then they are to notify the applicant and provide reasons for their decision.²⁷⁹ This provision is progressive in that it does not permit the Regulator to summarily dismiss the application but rather they are obligated to allow the applicant to address the concerns raised within 30 days, which may be extended by 21 days if good cause is shown. The guidelines laid out in section 9 significantly lower the risk of arbitrary denial of registration or delaying tactics by the Regulator to frustrate PBOs.

3.3. Regulatory Oversight

Section 34 of the PBO Act establishes the Public Benefits Organisations Regulatory Authority as the regulator of PBOs. It is a body corporate with perpetual succession and its functions include registering and deregistering PBOs, maintaining a register of registered PBOs, and advising the government on the activities of PBOs and their role in development within Kenya.²⁸⁰ Section 43(2) guarantees the Regulator's independence stating that it does not act under the direction or control of any person or authority. This helps ensure that staff at the regulatory authority discharge their duties per the Act and not following the whims of external influences. However, its Board will be composed of several members appointed by the Cabinet Secretary and even more principal secretaries from different ministries.²⁸¹ This can be contrasted with the Kenya

²⁷⁶ KHRC (n254) 11.

²⁷⁷ As above.

²⁷⁸ Section 9(1)

²⁷⁹ Section 9(2)

²⁸⁰ Ager (n270).

²⁸¹ Section 35.

Media Council which is composed of a few executive appointees and more members nominated by the Kenya Union of Journalists, the Law Society, and the National Gender and Equality Commission among others.²⁸² It can, therefore, be argued that the Board's independence may be eroded by having a board with more executive appointees than PBO-nominated members.

Section 42(1)(h) empowers the Regulatory Authority to institute inquiries to establish whether the activities of PBOs comply with the Act and require any officials of the PBO to provide the Authority with an inventory and the whereabouts of assets of the PBO. This provision may prima facie be justifiable in the interests of transparency. However, it could potentially be used to harass PBOs even when there are no genuine concerns simply to frustrate them. After notifying the organisation, the Authority can also cancel or suspend a certificate of registration for violating the PBO Act, acting contrary to the organisational constitution, or if the organisation has ceased to exist.²⁸³ By limiting the grounds for cancellation or suspension, the Authority's discretion in this regard is also limited. Furthermore, aggrieved PBOs may appeal to an independent and impartial tribunal which ensures that PBOs enjoy their right to due process.²⁸⁴

3.4. Dispute Resolution

The Act provides for the establishment of a PBO Disputes Tribunal which may hear complaints regarding breaches of the Act and appeals made to it. The Tribunal, however, has no jurisdiction over criminal matters except those relating to disobedience of summons to give evidence.²⁸⁵ The Tribunal's independence is indispensable to the effective discharge of its functions. Its members are appointed by the Chief Justice and approved by the National Assembly and this guarantees the Tribunal's independence and establishment as a credible dispute resolution mechanism.²⁸⁶ The Tribunal's decisions are final and binding on the parties except where judicial review is commenced within 14 days of the decision.²⁸⁷ Appeals of the Tribunal's decisions lie with the High Court whose decisions are final.²⁸⁸ Although the establishment of

²⁸² Media Council Act 46 of 2013, section 7(3) available at <https://mediacouncil.or.ke/sites/default/files/regulations/Media%20Council%20Act%20-%20Act%20No.%2046%20of%202013.pdf>.

²⁸³ Section 19 (1- 2).

²⁸⁴ KHRC (n254) 13.

²⁸⁵ Section 51.

²⁸⁶ David (n269) 39.

²⁸⁷ Section 52 (10).

²⁸⁸ Section 52 (11).

the Tribunal is progressive, the ousting of the jurisdiction of the Court of Appeal unjustifiably restricts PBOs' right to access justice.²⁸⁹

3.5. Sanctions and Penalties

Another issue of interest under the PBO Act is that it leans more towards PBOs being provided with the opportunity to remedy non-compliance before the imposition of sanctions. Severe sanctions such as prison sentences or fines are imposed for illegal actions such as fraud²⁹⁰ and disobedience of summons to give evidence.²⁹¹ Further, fines are imposed where requests for compliance have been ignored.²⁹² This is progressive because it prioritises compliance by PBOs without making civil society work unnecessarily risky for their staff.

3.6. Self-Regulation

The Act provides for voluntary self-regulation by PBOs which will enable them to determine standards, certifications, and adherence to a professional code of conduct. The Act provides for the establishment of the National Federation of Public Benefits Organisations. It will be a body made up of all the PBOs registered under the Act and the self-regulating forums of PBOs recognised by the Authority. By encouraging self-regulation, the Act emphasises that civil society regulation as envisioned by the Act is not repressive but rather seeks to create an enabling environment in which civil society can thrive but remain transparent.

4. Conclusion

The PBO Act is, as discussed above, a progressive piece of legislation that has regrettably been 'fraught with attempts to curtail its impact and avoid its implementation.'²⁹³ Considering the increasing calls for transparency and good governance in civil society the PBO Act goes a long way in striking a balance between enablement and regulation in the civil society sector. Its provisions provide valuable lessons for CSO regulation that is permissive and complies with international and national human rights standards. As noted by David, the 'enactment of the PBO Act represents a paradigm shift in the governance system of CSOs.'²⁹⁴ However, while the Act may provide lessons for other jurisdictions, in Kenya, its progressiveness will only be of value when the PBO Act is implemented.

²⁸⁹ Constitution of Kenya, article 48.

²⁹⁰ Section 64.

²⁹¹ Section 53.

²⁹² Section 18 (3).

²⁹³ The Observatory for the Protection of Human Rights Defenders (n256) 7.

²⁹⁴ David (n269) 41.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

1. Conclusion

This research has interrogated the role that CSOs play in ensuring the respect, protection, promotion, and fulfilment of human rights in Zimbabwe. It has found that the duty to respect, protect, promote and fulfil human rights is constitutionally vested in the state, all its agencies, and all its agents.²⁹⁵ The non-compliance of the GoZ has prompted the rise of vibrant and confrontational CSOs that have conducted human rights research, monitoring and documentation, education, advocacy, and litigation to resist human rights violations and hold perpetrators accountable. In response to this, the GoZ has imposed repressive regulatory laws to stifle civic space and force CSOs underground. As a result, the relationship between the state and CSOs in Zimbabwe has been turbulent.

With an appreciation of the turbulent relationship between CSOs and the state, the research considered the PVO Bill that proposes to change the regulation of CSOs. The proposed changes were analysed considering Zimbabwe's constitutional, regional and international human rights obligations. Under the human rights lens, the proposed changes were found to be *ultra-vires* the Constitution because they unjustifiably restrict the rights of CSOs, particularly the right to association. The PVO Bill was also found to give too much power to the executive arm of the GoZ to interfere with CSO functions through the Minister and the Regulatory Authority.²⁹⁶ Ultimately, the research concludes that the changes proposed in the PVO Bill are more repressive than permissive and thus fail to create an enabling environment for CSOs in Zimbabwe.

To find alternatives to the PVO Bill, the research considered the Kenyan example. It noted the existence of CSOs as trusts, companies limited by guarantee, non-governmental organisations, and societies in Kenya, all regulated under different legal regimes. It further noted that an enabling law, the PBO Act was enacted in 2013. Although the research concedes that this law is not yet in force in Kenya because of the lack of political will to ensure its implementation, this research still contends that the contents of the PBO Act may be used to derive lessons for the

²⁹⁵ Constitution, section 44.

²⁹⁶ Zimbabwe Coalition on Debt and Development (n220) 8.

regulation of CSOs in Zimbabwe. This is because the PBO Act is progressive and aims to create an enabling environment for CSOs as all regulatory laws must do.

2. Recommendations

Pursuant to the analysis of the Zimbabwean situation and the lessons drawn from international standards and the PBO Act, recommendations are made below for the GoZ, CSOs in Zimbabwe, and other actors.

2.1. For the Government of Zimbabwe

To address the concerns regarding the PVO Bill, the GoZ must:

1. Withdraw the proposed PVO Bill.
2. Parliament should resist the Executive's attempts to use its law-making role as a weapon against CSOs by rejecting the PVO Bill.
3. Maintain the current status quo where CSOs may exist in different forms. Regulatory pluralism allows CSOs to choose the regulatory regimes to exist under according to their ability to comply with the regulations, the work they do, the associated costs, the reporting obligations, and any other considerations they may have.
4. Self-regulation must be encouraged taking lessons from the legal fraternity which is regulated by the Law Society of Zimbabwe.
5. Establish an independent forum in which CSOs are represented to review CSO regulatory legislation in Zimbabwe and determine if any changes are necessary. If changes are found to be necessary, the GoZ must initiate a robust and inclusive consultation process with CSOs to discuss how the current laws may be changed. The following considerations must be made for the proposed reforms:
 - a. The law must aim to create an enabling environment for CSOs and comply with national, regional, and international standards.
 - b. The Minister's powers must be limited to guard against undue interference with the work of CSOs.
 - c. The Regulatory Authority must be established as an independent body that may work with the Minister but report to Parliament.
 - d. Where CSOs have not complied with the regulations, the emphasis must be on curing the non-compliance and not imposing sanctions. Where sanctions must

be imposed, fines may be acceptable, and deregistration may be an option for the most severe breaches. However, prison sentences must not be an option as they amount to criminalising CSO work.

- e. Reforming the registration process by:
 - i. Removing any requirements for re-registration and instead obligating CSO to simply notify the Regulatory Authority of changes in the scope of their work.
 - ii. Ensuring that any registration fees charged are nominal administrative costs.
 - iii. Mandating time limits within which the Regulatory Authority must decide on registration applications and failure to provide a decision within the set timeframe must be deemed as approval of the application following which a registration certificate must be issued within a set timeframe.
 - iv. Where registration is rejected, reasons must be given for the rejection, and the CSO allowed to rectify the situation leading to the non-registration decision.
 - f. Establishing an independent dispute resolution mechanism competent to consider any disputes relating to the regulations. To safeguard the independence of the mechanism, its members must be appointed in the same manner that judges of the High Court are appointed and provided with the same security of tenure. Appeals against decisions of the mechanism may lie with the High Court.
6. Ensure that whatever new regulatory law is passed, it is not applied retrospectively to deregister existing CSOs. Instead, the new law must give existing organisations the option to register under the new regime or take on new legal forms. If the GoZ passes a law that will repeal or amend the PVO Act, PVOs that are already registered must be deemed to be registered under the new law unless they notify the Regulatory Authority of their decision to take up a new legal form regulated under other regimes.
7. To comply with the FATF Recommendations the GoZ may:
- a. Carry out a National Risk Assessment for money laundering and financing of terrorism which can identify the existing risks, and if necessary, changes may be made to CSO legislation in consultation with CSOs to address the identified risk.

- b. Rely on the provisions of the PVO Act (Section 9(4) and 20) to access information from PVOs which is needed to combat money laundering and terrorist financing.
- c. In consultation with all affected stakeholders, the Ministry of Finance and the Financial Intelligence Unit may tighten finance and anti-money laundering laws, and if necessary, some aspects of these laws may address sector-specific risks and how they must be mitigated.

2.2. For Civil Society Organisations

This research acknowledges that CSOs in Zimbabwe have been working tirelessly to resist the PVO Bill since it was gazetted in 2021 and recommends that the following be done to enhance the ongoing efforts:

1. Monitoring and documenting the likely negative impact of the PVO Bill on communities which include economic consequences and increased impunity for violations. CSOs must use their findings to educate the communities on the PVO Bill and the effect it will have on them. The evidence gathered may also inform national, regional, and international advocacy aimed at spotlighting the likely negative consequences of the PVO Bill.
2. Facilitating national, regional, and international engagements to generate interest in, and mobilise support towards efforts to resist the passing of the PVO Bill. These engagements must target platforms such as engaging the legislature and the executive arm of the GoZ, the African Commission on Human and Peoples' Rights, the Pan-African Parliament, the UN Special Rapporteurs on Freedom of Association and Expression who have already expressed their concerns over the PVO Bill.
3. Collaborating with CSOs from other countries where civic space is under siege and engage the Elders, an independent group of global leaders working together for peace, justice, and human rights. One of the Elders' areas of interest is ethical leadership, and this can be used as an inroad for them to be mediators between the GoZ and CSOs in Zimbabwe recognising the importance of CSOs in the enjoyment of human rights.
4. Using litigation to subject the limitations on rights proposed in the PVO Bill to the strict test defined in section 84 of the Constitution and the one in Article 22 of the ICCPR. This may be done in anticipation of the passing of the PVO Bill into law or after it is passed.

5. As a last resort, CSOs must search for new organisational structures which they can take on should the PVO Bill be passed into law. Such structures may be, having organisational headquarters in other countries and having groups of activists and volunteers in Zimbabwe feeding into the organisations' work. This option may enable organisations to work without dealing with administrative and legal harassment that the PVO Bill would bring. However, it presents its difficulties such as challenges in securing funding, targeting of the activist and volunteers by the GoZ as well as loss of legal personality in Zimbabwe.

2.3. For Other Actors

CSOs do not operate in a vacuum but engage with other actors who may be affected by the crippling of CSOs. These actors are identified below, and it is recommended that they do the following to contribute to the efforts to resist the passing of the PVO Bill.

1. Donor Community
 - a. Engage the GoZ directly or through their governments to withdraw the PVO Bill.
 - b. Provide technical and financial support to CSOs in their efforts to resist the PVO Bill and if it is passed provide support for CSO responses to its consequences.
2. The United Nations, African Union, and the Southern African Development Community
 - a. Engage the GoZ and urge it to withdraw the PVO Bill and urge it to ensure that any changes made to CSO regulation in Zimbabwe are in line with regional and international standards and do not violate the rights to freedom of association and expression among others.
3. Financial Action Task Force
 - a. Engage GoZ and categorically state that the PVO Bill goes over what is required to comply with its recommendations and must be revised to ensure compliance.
4. Members of the Public
 - a. Carry out peaceful protests calling for the withdrawal of the PVO Bill and challenging their elected representatives not to disregard their views as they will also be affected by the consequences of the Bill.
 - b. Petition President Mnangagwa not to sign the Bill into law if it is passed by Parliament.
5. Zimbabwe Human Rights Commission (ZHRC)

- a. As the primary national human rights institution, the ZHRC's silence on the PVO Bill and the implications it has for human rights is concerning. This may be remedied by the ZHRC condemning the PVO Bill and how it proposes to close civic space.
- b. Engage the GoZ to discuss its position on the PVO Bill and even negotiate a compromise.
- c. Work with CSOs to challenge the PVO Bill and work tirelessly to create a conducive environment for CSO work in Zimbabwe.

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