

JANUARY 2022

THE GREAT GIFT OF ACTIVE CITIZENS

HOW THE PVO BILL THREATENS ACTIVE CITIZENSHIP IN ZIMBABWE



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THINGS TO REMEMBER
FROM THIS REPORT ABOUT
THE PVO BILL AND SHRINKING SPACE



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1992 - 2022



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Executive Summary

On 5 November 2021, the Government Gazette published the long-awaited Private Voluntary Organisations Amendment Bill which seeks to amend the current PVO Bill. The Bill, as has been alluded to by many experts, is bad for the country. It violates several fundamental freedoms. As both a common law universitas and as a registered PVO, ZimRights is concerned about the impact of the proposed law on the enjoyment of fundamental rights. As such, on 24 December 2021, representatives from ZimRights' 11 provincial chapters converged for a reflective meeting, looking at the implications of the bill on the work of ZimRights.

What emerged from the reflective meeting is that active citizenship is under siege in Zimbabwe. Members noted that attacks against civil society did not start with the PVO Bill. The PVO Bill is merely an explicit documentation of the hostility against NGOs that dates back to the Mugabe era.

Members thus tasked the ZimRights Secretariat to join hands with other civil society actors is pushing back the anti-NGO propaganda that saw the birth of the PVO Bill. Speaking at the meeting, ZimRights National Chairperson, Mr. Takesure Musiiwa stated that ZimRights was not anti-regulation of the civic space. This was evidenced by the fact that, while it was not yet an obligation, ZimRights made a decision to register as a PVO because it is an organisation that believes in the rule of law and that it has nothing to hide. This is not to say that organisations that are not registered have something to hide, no. But this is to say that the current position should not be interpreted as an anti-regulation position. But what has been seen in the current conversations and the current bill is not about regulation. It is just an attack on active citizenship.

As both a common law universitas and as a registered PVO, ZimRights is concerned about the impact of the proposed law on the enjoyment of fundamental rights.

In presenting this special report, ZimRights seeks to explain its position and why that position must be supported by all citizens around the world. In this report, you will therefore see a reflection not just focused on the bill but rather broadly on the shrinking space.

The report opens by discussing why civic space matters. With reference to community stories and UN documents, the report opens the curtain to ordinary people who occupy the civic space and shows why their work is not a craft of luxury but a struggle for survival and human dignity.

The report goes on to look at civic space from the human rights perspective. Using both domestic and international law, the report dismantles the myth that civic space is a gift from the state. The report affirms that it is a right, protected by the Constitution.

“All power derives from the people.”
The chapter concludes.

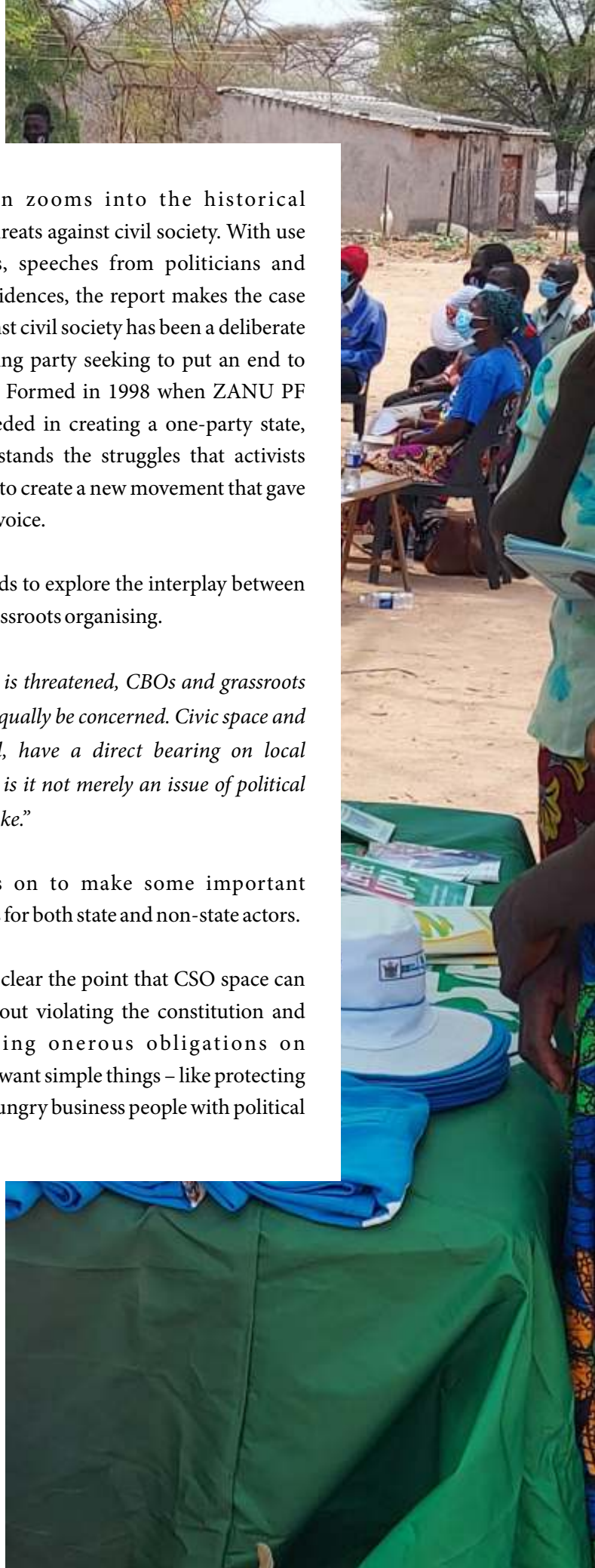
The report then zooms into the historical development of threats against civil society. With use of media reports, speeches from politicians and stories of past incidences, the report makes the case that hostility against civil society has been a deliberate project of the ruling party seeking to put an end to active citizenship. Formed in 1998 when ZANU PF has almost succeeded in creating a one-party state, ZimRights understands the struggles that activists had to go through to create a new movement that gave ordinary people a voice.

The report proceeds to explore the interplay between civic space and grassroots organising.

“When civic space is threatened, CBOs and grassroots movements must equally be concerned. Civic space and how it is utilised, have a direct bearing on local development, thus is it not merely an issue of political participation at stake.”

The report goes on to make some important recommendations for both state and non-state actors.

The report makes clear the point that CSO space can be regulated without violating the constitution and without imposing onerous obligations on communities that want simple things – like protecting their lands from hungry business people with political connections.



Foreword: True Wealth

“My country is rich in minerals and gems that lie beneath its soil, but I have always known that its greatest wealth is its people. Finer and truer than the purest diamonds.”

These words by Nelson Mandela capture a very fundamental leadership consciousness at the heart of Ubuntu that seems to be escaping many of today's leaders. When leaders lose this consciousness, the dangers of authoritarianism, primitive accumulation and even genocide start to creep in. Sadly, our history is rich in the consequences of these.

For us at ZimRights, it has been a journey of 30 years that has taught us this philosophy from the lived realities of the communities we serve. Formed in 1992 as Zimbabwe's first post-independence indigenous human rights advocacy group, our association has grown over the years bringing together over 250 000 citizens, to speak and act for human rights. The brave work of our founders who spoke at a time when the one-party-state was consolidating, created a foundation for a thriving human rights movement in Zimbabwe.

Today, 30 years later, the nation finds itself once again at a crossroads where all the gains of citizen engagement in the past 30 years, are in danger of being wiped out through a stroke of the pen as the government of Zimbabwe pushes for the PVO Bill, which for all intents and purposes is just but a blatant attack on active citizenship. And the question that confronts millions of Zimbabwean citizens who so dearly love their country is, “What shall we do?”

Towards the end of 2021, our communities came together to reflect on this, and many questions that have rocked the human rights movement. In this report, we share some reflections that came from our activists throughout the country. Looked together, these views can be summarised in one sentence – Our great nation cannot afford to lose the great gift of active citizens. Sadly, if the current Bill being pushed by the government is allowed to pass,



this great gift will be taken away and the nation will inevitably fall into a dark night.

In sharing this report, which is substantially sound in terms of the law, best practice and backed by stories of ordinary people, we hope to start an honest conversation about the shrinking civic space in Zimbabwe.

We invite you to be part of this conversation.

Dzikamai Bere
National Director
Zimbabwe Human Rights
Association



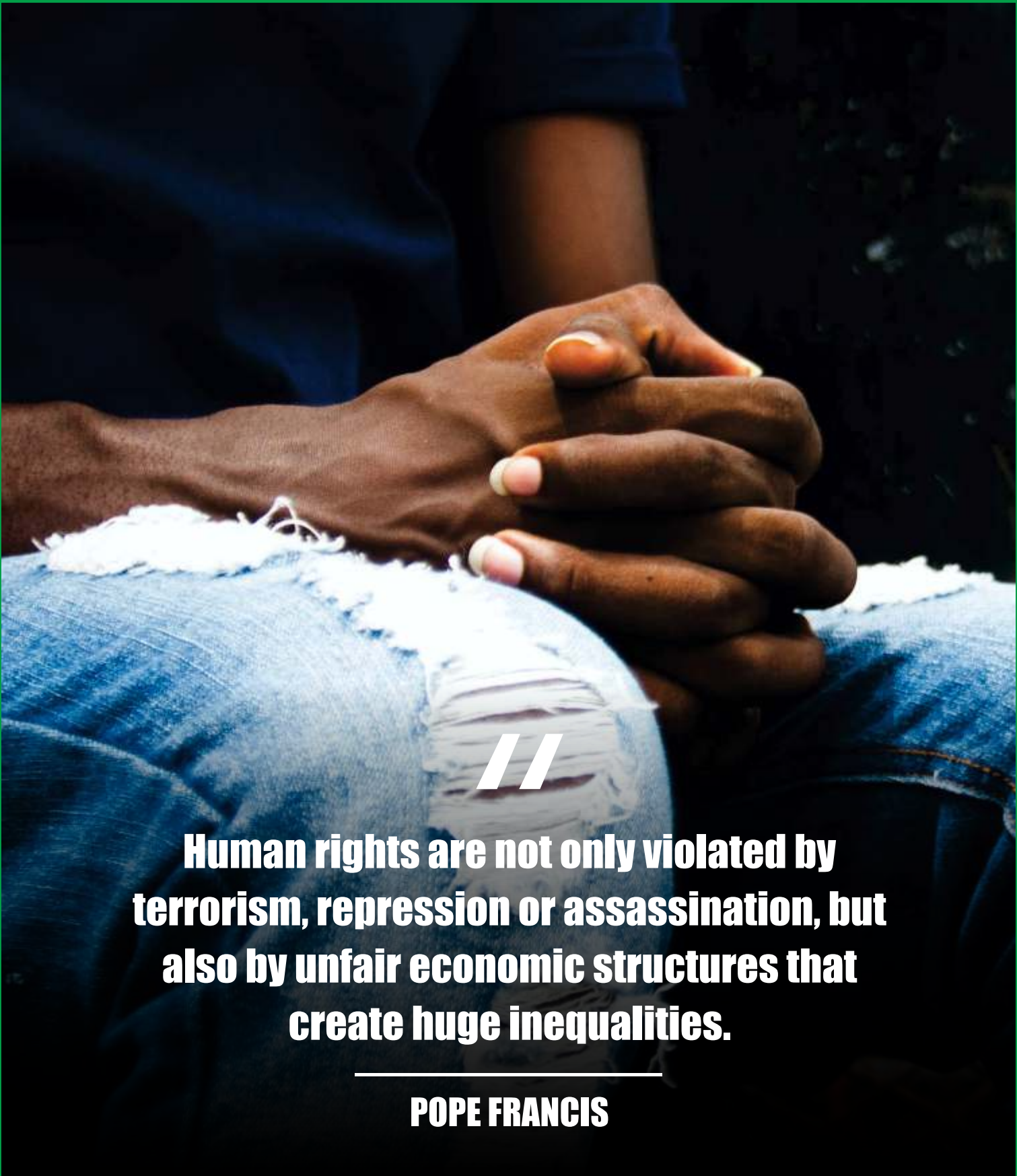
BACKGROUND

to the PVO Bill

In recent times, issues of civic space have become topical in Zimbabwe and the African region at large, on account of the overt moves to shrink the space. Of concern in Zimbabwe is the current Private Voluntary Organisations (PVO) Amendment Bill, and other factors affecting the operations of

civil society organisations (CSOs) in Zimbabwe. Over the years, we have learnt that when issues of civic space are mentioned, many think of big national organisations and yet none of these would be able to operate effectively without the ground almost invisible operations of grassroots and community-based

organisations (CBOs). In times where civic space is threatened it is important for the grassroots movements to push back on shrinking civic space, claim active agency, and sustain their operations in the face of hostility.



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Human rights are not only violated by terrorism, repression or assassination, but also by unfair economic structures that create huge inequalities.

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WHY CIVIC *space matters*

Civic space is that space where ordinary citizens come together to defend the values that they care about. It is the space which citizens have to organise, outside the spaces controlled by the State. This is where accountability is exacted and where social movements form.



REFLECTION

REFLECTION: TRUE LEADERSHIP STANDS FOR, NOT AGAINST THE PEOPLE

In 2020, a bitter war was brewing in Siakobvu in Kariba between the local community and conservancy companies. Because of the ongoing conservancy project, the local community, which survives on fishing along the Zambezi River was prohibited from fishing. But they have no other form of livelihoods, so they insisted. The conservancy company hired a hostile security company that started targeting the local fishermen and sinking their boats. Not only were lives endangered, but the livelihoods of hundreds of families were in danger. So it became a showdown. When ZimRights members in the community decided to take the local authority head-on, they were told that according to the records, the community had signed consent papers. In truth, no such consent existed. It was fraud by the local traditional leaders whom the community accused of receiving bribes from conservancy companies. The case showed that true leadership resides in the people. Without the freedom and capacity to organise themselves, communities are at the mercy of greedy leaders.

Read the full story of the Mola Resistance here:

<https://www.newsday.co.zw/2021/07/forgotten-batonga-communities-sue-for-lack-of-development/>

Civic space is that space where ordinary citizens come together to defend the values that they care about. It is the space which citizens have to organise, outside the spaces controlled by the State. This is where accountability is exacted and where social movements form. Civil society is thus a community of citizens linked by common interests and collective activity. It is the lifeblood of our democracy. When the people of Siakobvu are abandoned by their own government and defrauded by traditional leaders, they have the right to create their own space and defend their livelihoods. They do not need permission to do so. It is the right to life. The right to human dignity that is at stake.

According to the United Nations, “Civic space is the environment that enables people and groups – or ‘civic space actors’ – to participate meaningfully in the political, economic, social and cultural life of their societies. States shape the legal

and policy space within which people express views, assemble, associate and engage in dialogue with one another and with authorities about issues that affect their lives, from the quality of basic services, to better institutions and respect for fundamental freedoms. Civil society actors – including human rights defenders, women rights advocates, children, young people, members of minorities and indigenous people, trade unionists and journalists – should be able to express themselves freely in full security, and effect change peacefully and effectively”.¹ Civic space is part of democratic space, where the civic space exists or must exist to further democratic ideals, as required under the Zimbabwean constitutional order.

Traditionally, non-governmental organisations (NGOs), in different forms, have been the dominant players in the civic space, but CSOs denotes a whole range of

organisations, unions, federations, associations, establishments, and entities that are simply non-state actors, and not-for profit. Among these are CBOs – which are different from the national organisations by virtue of their operations being confined to particular communities, as well as faith-based establishments.

Among the key focus areas that CSOs in their various outlooks have taken a solid and consequential stance in national development, include

- political rights (e.g. voter education and registration; election monitoring);
- civic engagement;
- civic education;
- advancing the interests of minority and vulnerable groups;
- driving for political and institutional reform;
- influencing policy and legislation through lobbying and advocacy;
- and advancing community-led development.

Civic space is that space where ordinary citizens come together to defend the values that they care about.

1. United National Guidance Note, Protection and Promotion of Civic Space, September 2020, https://www.ohchr.org/Documents/Issues/CivicSpace/UN_Guidance_Note.pdf



CIVIC SPACE

the Law and the Rights

Civic space is enabled or facilitated by what are known as the three (3) core rights: the rights to freedom of association, freedom of peaceful assembly and freedom of expression. At international law, Zimbabwe is a State party to the International Covenant on Civil and Political Rights (ICCPR) (1966), which makes provision for the three core rights.² This is complemented by the development agenda, which includes

Goal 16 of the UN Sustainable Development Goals where UN member states agreed to “*promote just, peaceful and inclusive societies*”.³ At the African Union (AU) level, the AU has established a strong normative basis for civic participation through a number of key legal instruments and policy frameworks, among them the African Charter on Human and Peoples’ Rights (ACHPR) (1981)⁴

and the African Charter on Democracy, Elections and Governance (ACDEG) (2007).⁵ The ACHPR makes provision for the rights to freedom of association, peaceful assembly and expression, as well as the circumstances under which they may be limited.⁶ The ACDEG makes specific provision for civil society as follows:

2. See Article 19 (conscience and expression); Article 21 (assembly); Article 22 (association) and Article 25 (participation and political rights).

3. United Nations Development Programme (UNDP), Sustainable Development Goals, (2015), https://www.undp.org/content/dam/undp/library/corporate/brochure/SDGs_Booklet_Web_En.pdf

4. African Union, African Charter on Human and Peoples’ Rights, (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986), <https://www.achpr.org/legalinstruments/detail?id=49>

5. African Union, African Charter on Democracy, Elections and Governance, adopted by the Eighth Ordinary Session of the Assembly, Held in Addis Ababa, Ethiopia, 30 January 2007, Entry into force on 15 February 2012, <https://au.int/en/treaties/african-charter-democracy-elections-and-governance>.

6. See Article 10 (association), Article 11 (assembly) and Article 13 (participation).

“ARTICLE 12

State Parties undertake to implement programmes and carry out activities designed to promote democratic principles and practices as well as consolidate a culture of democracy and peace.

To this end, State Parties shall:

[...]

- 3. Create conducive conditions for civil society organizations to exist and operate within the law ...”*

“ARTICLE 27

In order to advance political, economic and social governance, State Parties shall commit themselves to:

[...]

- 2. Fostering popular participation and partnership with civil society organizations; ...”*

“ARTICLE 28

State Parties shall ensure and promote strong partnerships and dialogue between government, civil society and private sector.”

Civic space in Zimbabwe is regulated under the Constitution of Zimbabwe (2013), and under statute. The Constitution being the supreme law of the land, takes pride of place, and any law, practice or conduct that derogates from the Constitution, is illegal and unlawful to the extent of that derogation.⁷

ALL POWER DERIVES FROM THE PEOPLE

Addressing the Democracy in Central and Southern Africa Conference⁸ in Cape Town in 2019, Graca Machel said the quality of democracy today depends on the quality of our citizenry. In her impassioned keynote address she

said that societies today are paralysed because they are expecting too much from leaders who can deliver nothing. She said the concept of sovereignty residing in the people means the people must lead. Many times people stand and swear at leaders for their failures and yet they (the people) absolve themselves of

7. Section 2, Constitution of Zimbabwe (2013).

8. The Democracy in Central and Southern Africa Conference was convened by the Mandela School and the Kofi Annan Foundation in Cape Town from 4 to 6 September 2019. Proceedings of the conference are available on https://www.youtube.com/watch?v=ifEIXwc0yuc&fbclid=IwAR0DiDzAXy_X7dYwFvflc3VfrRY9dQooyih_-7y7J4GkdFfruayQAs9kqOQ



self-organise and pursue legal and constitutional objectives. Sections 88, 117 and 162 of the Constitution, show that legislative, executive and judicial authority, under our trias politica system of government, derives from the people.¹⁰ The Constitution itself is enacted by “We The People”.¹¹

FREEDOMS OF ASSEMBLY AND OF ASSOCIATION

The people have freedom of association and the freedom to assemble. These are the hallmarks of civic space, without which, there is no civic space. The people are thus entitled to self-organise outside of the State. Section 58 of the Constitution provides as follows:

“58. FREEDOM OF ASSEMBLY AND ASSOCIATION

1. Every person has the right to freedom of assembly and association, and the right not to assemble or associate with others.
2. No person may be compelled to belong to an association or to attend a meeting or gathering”.

of any responsibility. It is this attitude that is leaving societies in a state of paralysis. The quality of our leadership depends on the quality of the citizenry.

Machel said, “We are going to be paralysed if we do not take responsibility as citizens who know how to organise. Citizens who know of that big principle in each one of our constitutions which says, ‘sovereignty resides in people. ...’, we have to internalise that it cannot be those few who are called leaders. It has to be us, as organised. We have in our veins that legacy of caring for one another.”

She went on to say, “We cannot afford

*to be complacent. History teaches us that when citizens abdicate their responsibilities to remain engaged and demand social justice from their leaders and institutions, a deterioration of democracy and peace and security follows. This is why the threat to democratic freedoms and universal human rights needs to be challenged, loud and clear.”*⁹

There is no doubt that the current threats against civic space are a threat to democratic freedoms.

Under Zimbabwe’s constitutional architecture, all power derives from the people. This means the people have the constitutional authority to

9. Find the whole keynote address here <https://gracamacheltrust.org/2019/09/13/graca-machel-keynote-democracy-in-central-and-southern-africa-conference/>

10. 10 “88. Executive authority

1. Executive authority derives from the people of Zimbabwe and must be exercised in accordance with this Constitution”.

“117. Nature and extent of legislative authority

1. The legislative authority of Zimbabwe is derived from the people and is vested in and exercised in accordance with this Constitution by the Legislature.”

“162. Judicial authority

Judicial authority derives from the people of Zimbabwe and is vested in the courts....”

11. See Preamble to the Constitution of Zimbabwe (2013).

The right to freely associate includes the right of every person without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, sexual orientation or other status, to “establish a civil society organisation and also to freely join one or choosing not to participate”.¹² Thus individuals may operate civil society organisations and participate in their activities without fear or unwarranted interference.¹³ This includes the right to set up institutions and do all that is necessary for their functioning, and to affiliate and cooperate with other organisations locally, nationally or internationally.

FREEDOM OF EXPRESSION

The right to freedom of expression entails, according to the Universal Declaration of Human Rights, the “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹⁴ The right is fundamental to the existence of civil society. It includes “the right to access information, critically evaluate and speak out against the policies and actions of state and non-state actors,

as well as publicly draw attention to and carry out advocacy actions to promote shared concerns, without fear of retribution from any quarter. Civil society organisations are also assured the freedom to carry out investigations and document their findings under this right”.¹⁵ Section 61 of the Constitution of Zimbabwe makes provision for freedom of expression.

POLITICAL RIGHTS

Civic space includes the rights to participate in political process, alone or in associations. Section 67 of the Constitution states as follows:

“67. POLITICAL RIGHTS

[...]

2. Subject to this Constitution, every Zimbabwean citizen has the right:

- a. to form, to join and to participate in the activities of a political party or organisation of their choice;
- b. to campaign freely and peacefully for a political party or cause;
- c. to participate in peaceful political activity; and
- d. to participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause. ...”

STATUTES

As legal entities, CSOs are also regulated by statutes. The main legal vehicles through which civil society organisations exist and operate in Zimbabwe, are private voluntary organisations (PVOs) and trusts. PVOs are regulated by the Private Voluntary Organisations (PVO) Act.¹⁶ Under section 6 of the Act, PVOs are required to register. The Act states that a “private voluntary organization” means any body or association of persons, corporate or unincorporated, or any institutions, the objects of which includes or are one or more of the following:

12. CIVICUS: World Alliance for Citizen Participation, Compendium of International Legal Instruments and other Inter-Governmental Commitments Concerning Core Civil Society Rights, January 2014, http://www.civicus.org/images/stories/Compendium_International_Legal%20Instruments_Et_Al_2014.pdf

13. Ibid.

14. United Nations General Assembly, Universal Declaration of Human Rights (UDHR), Paris, 10 December 1948 (General Assembly resolution 217 A) <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

15. CIVICUS, Civic Space Monitor, <https://monitor.civicus.org/whaticivicspace/>.

16. Private Voluntary Organization Act [Chapter 17:05], (1966), <http://www.veritaszim.net/node/259>.

- (a) the provision of all or any of the material, mental, physical or social needs of persons or families;
- (b) the rendering of charity to persons or families in distress;
- (c) the prevention of social distress or destitution of persons or families;
- (d) the provision of assistance in, or promotion of, activities aimed at uplifting the standard of living of persons or families;
- (e) the provision of funds for legal aid;
- (f) the prevention of cruelty to, or the promotion of the welfare of, animals;
- (g) such other objects as may be prescribed; and
- (h) the collection of contributions for any of the foregoing.

However, not all organisations are considered to be PVOs that are required to be registered in terms of Act. The definition in the Act has a proviso which exempts certain organisations from being deemed PVOs and therefore in need of registration. The Act specifically exempts, among others, any trust established directly by any enactment or registered with the High Court; or any body or association of persons, corporate or unincorporated, the benefits from which are exclusively for its own members. In all there are ten (10) types of organisations that are exempt from registration.¹⁷



The operations of a trust on the other hand, are governed by the common law and the trust deed, in terms of the Deeds Registries Act [Chapter 20:05] as amended 2005.¹⁸ Trusts do not have to register in terms of the PVO Act. A trust may receive money, goods and services from anyone anywhere and can do anything that its deed allows it to do. There have been arguments that a trust has to have its own money and cannot seek resourcing from outside. It is incorrect to suggest that a trust has to have its own money, sourced privately, and cannot seek resourcing from international and/or local funding organisations, or even the government. For a trust to exist it needs a settlor. It therefore follows that to exist it needs an entity to receive donation(s). Without such donation(s) a trust cannot exist at law.

PROVINCIAL/GRASSROOTS REGISTRATION OF CSOs?

There currently is no requirement in Zimbabwe, nor a legal obligation, for an NGO to register at provincial or district levels, with the Provincial Minister of State's Office, a Provincial Development Coordinator, or a District Development Coordinator.¹⁹ There is no enactment or subsidiary legislation that calls for the specific local registration of activities of NGOs.

POLICIES

Sometime in July 2003 the Ministry of Public Service, Labour and Social Welfare released a Policy Directive on NGOs (more particularly on NGOs carrying out Humanitarian and Developmental assistance work)

17. Ibid.

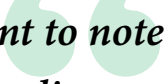
18. Deeds Registries Act [Chapter 20:05] as amended 2005, <https://www.veritaszim.net/node/199>.

19. A reading of section 10 of the Provincial Councils and Administration Act [Chapter 29:11] (1985) clearly points towards the fact that the Governor's Office powers are confined the co-ordination of the various Ministries and organs of central government.


Section 5.1 of the said policy document talks about registration. What is important to note about the policy document is that the policy on registration relates to organisations taking part in humanitarian assistance operations, and acknowledges that a humanitarian NGO can operate at any level – national, provincial or district level. Registration is strictly in terms of the Private and Voluntary Organisations Act and before a humanitarian NGO is registered to work, it should solicit a letter of support from the

Provincial Development Committee. (This only applies to organisations that are not yet registered and are seeking registration with the Ministry of Social Welfare.) There is nothing in the policy paper that empowers a Governor, or a Provincial Minister of State, or any provincial or district level official, to suspend the operations of an NGO. There is equally nothing in the policy that requires the provincial registration of an NGO. By nature, a policy document or policy position is not

law. Policy must be legislated if it is to have binding effect. It is also important to highlight that NGOs that are registered in terms of the Private Voluntary Organisations Act are answerable to the Ministry of Public Service, Labour and Social Welfare through the Registrar of NGOs. Nowhere in the Act are the powers of regulation and registration given to provincial or district government spheres or functionaries.



What is important to note about the policy document is that the policy on registration relates to organisations taking part in humanitarian assistance operations, and acknowledges that a humanitarian NGO can operate at any level – national, provincial or district level.



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**We cannot always build the future
for our youth but we can build
our youth for the future.**

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HOW IS CIVIC SPACE *threatened, and what are the current threats to civic space in Zimbabwe?*

Civic space goes under threat when the constitutive rights of civic space are under threat. This means when the freedoms of expression, association and assembly are under threat. This is consummated when the institutions that are supposed to protect these rights and their exercise, such as the police and the courts, fail to do so, for whatever reason. Primarily, insofar as those CSOs in the governance and

democracy space are concerned, these tend to be viewed negatively by autocratic and semi-autocratic governments, because of the pressure they keep on government to be accountable and to be transparent. Very often, there is deliberate misconstruing the work of NGOs, with the result that NGOs are deemed to be doing anti-government work. Very often those who push for accountability, transparency, rights and good

governance are viewed as political players, or engaging in political work. A range of governments in African and elsewhere, are (mis)using new and existing laws to limit the creation of legitimate CSOs, restrict their operations, and control their funding. Zimbabwe has even more forcefully joined this class of nations. The following are some of the ways that civic space is under threat in Zimbabwe.

REFLECTION: ARE NGOS A THREAT IN COMMUNITIES?

In November 2021, the President in an address to a rural community, repeated statements severally made at ZANU-PF supporters' gatherings, encouraging the audience to *"Report any new NGOs to your Minister of State so that it is established whether the NGO is for good or not. If you just accept such NGOs you end up regretting because some have ulterior motives and you may land yourself in trouble."*

The truth is that under the new dispensation, businesses and politicians are the threats against communities. The displacements happening in Chilonga is not caused by NGOs. The same is true of Hwange and Chisumbanje. And yet the President has never asked anyone to report businesses that destroying peoples homes.

On 8 October 2021, the Herald carried a report, *"Murowa Diamonds Finally Decamps from Chivi School."* This was the story of vigilant parents who confronted a mining company that was camping at a school, disrupting learning while exploring for diamonds. And the President did not make statement against Murowa diamonds. The community, seeing no help from the state, organised itself and defended the right to education for its children. And these stories are many, throughout the country.

Read the whole story of parents confronting Murowa Diamonds here:

<https://www.herald.co.zw/murowa-diamonds-finally-decamps-from-chivi-school/>

ANTI-CSO NARRATIVE

Because the work of CSOs is generally to hold the State to account, identify gaps in government interventions, and to call out on human rights and legal infractions, many CSOs in this kind of work face the challenge of being

negatively labelled. CSOs in Zimbabwe have been labelled, as follows, among many other descriptions by ruling party, some government functionaries and State or State-aligned media:

- "NGOs are meddling in political processes in Zimbabwe to effect

*regime change as they push the nefarious interests of some nations in the West";*²⁰

- "regime change agents";²¹
- "plotting to overthrow his government";²²
- "NGOs with ulterior motives";²³

20. "Naughty NGOs masked as Trusts", The Patriot, 9 July 2021. <https://www.thepatriot.co.zw/top-news/naughty-ngos-masked-as-trusts/>

21. Ibid.

22. "We're watching you": Zim's Mnangagwa guns for 'hostile' NGOs", Sunday Times, 13 October 2020, <https://www.timeslive.co.za/sunday-times-daily/africa/2020-10-13-were-watching-you-zims-mnangagwa-guns-for-hostile-ngos/>

23. "Be wary of politicking NGOs", The Herald, 15 November 2021, <https://www.herald.co.zw/be-wary-of-politicking-ngos/>

- “evil society”;²⁴
- “opposition aligned NGOs”;²⁵
- “avid critics of government”.²⁶

Government and ruling party leaders have been speaking out against the engagement of NGOs in “political activities” and this has been seen as meaning to set the pretext for legal restrictions imposed on the NGO sector. “Political activity”, is a value term that is capable for broad interpretation, such that criticising the government of the day for its errors of omission or commission, may be seen to be political activity by that government. In the process, government is insulating itself from criticism and accountability. This, however, does not usually end in rhetoric, as we are seeing in Zimbabwe. There have been past and current moves towards greater regulation of CSOs. In 2004, the government of Zimbabwe introduced an NGO Bill which was passed by both houses of Parliament and was presented to the President for presidential assent. After intense lobbying, the President did not sign the Bill into law. Much of what is now provided in the PVO Amendment Bill recently gazetted on 5 November

2021, was provided for in that proposed law, with even more restrictions being introduced.

THREATS TO DE-REGISTER CSOS AND TO BAR ACCESS TO COMMUNITIES

Several threats have been made against what are perceived to be “non-governmental organisations suspected of plotting to overthrow his government”. According to President Emmerson Mnangagwa, government is watching these NGOs, and will de-register those found wanting.²⁷ In November 2021, the President in an address to a rural community, repeated statements severally made at ZANU-PF supporters’ gatherings, *encouraging the audience to “Report any new NGOs to your Minister of State so that it is established whether the NGO is for good or not. If you just accept such NGOs you end up regretting because some have ulterior motives and you may land yourself in trouble”*.²⁸ Earlier on 13 October 2021, Mr Patrick Chinamasa, Acting ZANU-PF Spokesperson, had said in a press briefing in Harare that, “some non-governmental organisations (NGOs)

were receiving funding from the West to topple the government and the party will soon be issuing a directive to party supporters to shun them. So, we will be writing a directive mentioning the NGOs that are proxies of countries wanting to topple the Zanu PF government. We will tell our supporters, don’t have anything to do with those people, don’t associate with those people, they are no good, they are going to bring misery to you”.²⁹ This messaging, in addition to sending a chilling message to CSOs, also activates some communities against CSOs, barring access to CSOs to certain communities.

PVO AMENDMENT BILL

Perhaps the biggest threat against civil society today is the PVO Bill. On 5 November 2021, the Private Voluntary Organisations Amendment Bill was gazetted. In earlier pronouncements before Parliament, the President had said a proposed PVO Amendment Bill will be gazetted, to “deal with NGOs and PVOs operating outside their mandates and out of sync with the government’s humanitarian priorities”.³⁰

24. ZANU-PF Acting Secretary for Information and Publicity Mr Patrick Chinamasa at a Press Conference in Harare, 27 May 2020

25. “Role of NGOs in regime change agenda” The Patriot, 28 March 2019, https://www.thepatriot.co.zw/old_posts/role-of-ngos-in-regime-change-agenda/.

26. “JUST IN: Gvt speaks on alleged abductions”, The Herald, 4 June 2020, <https://www.herald.co.zw/just-in-gvt-speaks-on-alleged-abductions/>

27. “We’re watching you: Zim’s Mnangagwa guns for ‘hostile’ NGOs”, Sunday Times, 13 October 2020, <https://www.timeslive.co.za/sunday-times-daily/africa/2020-10-13-were-watching-you-zims-mnangagwa-guns-for-hostile-ngos/>

28. “Be wary of politicking NGOs”, The Herald, 15 November 2021, <https://www.herald.co.zw/be-wary-of-politicking-ngos/>

29. “Mad’ Chamisa provoked us: Zanu PF” Newsday, 13 October 2021, <https://www.newsday.co.zw/2021/10/mad-chamisa-provoked-us-zanu-pf/>

30. “Zimbabwe: Mnangagwa Threatens to Crack Whip On NGOs”, Zimbabwe Independent, 23 October 2020, <https://allafrica.com/stories/202010240005.html>

According to the Bill now gazetted, the Bill seeks to amend the PVO Act for reasons including:

- to comply with the recommendations of the Financial Action Task Force (FATF);
- to facilitate the easier registration and operation of PVOs; and
- to prevent PVOs from engaging in political activities.

The FATF is a multilateral body created to ensure that measures are in place to fight money laundering and terrorist financing (ML/TF). FATF has developed 40 standards and these include recommendation 8 which focuses on non-profit organisations (including PVOs).

Under recommendation 8, Zimbabwe is required to apply ML/TF measures:

- only to non-profit organisations/PVOs that have been identified to be at risk (not the whole non-profit/PVO sector);
- to consult with non-profit organisations / PVOs in the process; and
- to apply equal, fair, balanced and focused measures.

While the Bill is ostensibly gazetted to fulfil FATF recommendation 8, the reality is that the Bill does little on the issue of ML/TF, but more on restricting the work of all PVOs, and not just those that are deemed to be

at risk of ML/TF. In the process, the Bill violates important human rights and affect communities that depend on the work of PVOs. The Bill opens up for greater regulation of NGOs, allowing for targeting of those NGOs that may be perceived as anti-government, for even greater regulations, scrutiny and oversight by the government, including interference with the internal governance of the NGOs. In pursuit of these political ends, the consequence of the Bill is that it limits the ability of citizens to access health, legal, humanitarian and other support that is offered by PVOs.



WHAT ARE SOME OF THE CONCERNING ISSUES BEING INTRODUCED IN THE BILL?

- **Trusts and common law universitas associations will be ordered to register under the PVO Act.** Designated organisations will become unlawful entities unless they register under the Act. Registration under the PVO Act is a very difficult registration process.
- **Organisations will not be allowed to receive funds and contributions** from well-wishers, including those who are outside the country, to support their operations and be able to pay their workers, unless they register and disclose such funding. The Bill makes it a punishable crime for designated organisations to receive such funds and contributions without registration.
- **It bans PVOs from working on issues involving politics.** PVOs are not allowed to support or oppose any political parties or candidate in any elections. The Constitution of Zimbabwe, the highest law of the land, gives everyone (including PVOs) important rights to participate in democratic processes and to have a say in local and national issues, including politics.
- **It bans PVOs from working on issues involving politics.** PVOs are not allowed to support or oppose any political parties or candidate in any elections. The Constitution of Zimbabwe, the highest law of the land, gives everyone (including PVOs) important rights to participate in democratic processes and to have a say in local and national issues, including politics. The Bill is not clear on the exact meaning of “support” (or “oppose”), which means that PVOs who assist victims of political violence, conduct voter education, provide legal support to opposition candidates who are victims of rights violations, or support a political party’s position that advances good governance and human rights, may be punished and jailed for exercising their rights.
- **The Bill allows for suspension and removal of executive committees of PVOs.** The Minister of Public Service and Social Welfare is given very wide powers to remove those in charge of or running these organisations and replace them with those he may choose. This is unlawful because it affects the ability of PVOs to decide their own leaders. The Minister may appoint people who have no interest in advancing the work of PVOs. This violates the right to freedom of assembly protected by the Constitution of Zimbabwe.
- **The Minister is given too much power to label any PVO as “high risk” or “vulnerable to” misuse for terrorism funding and impose measures against them.** The Bill fails to show the way or manner in which the Minister may impose such dangerous measures. There is no consultation with PVOs. This violates the law and FATF standards, as it gives unchecked powers to the Minister to do as he pleases and subject those whom he may not like to very harsh measures.
- **The Bill forces PVOs to reveal to the Minister any funding that comes from outside of Zimbabwe.** This is a violation of the right to privacy protected in the Constitution.

- The Bill makes it a duty for organisations to apply to the Registrar for approval for “*material changes*” in the organisation, including changes to their Constitution, institutional changes, or changes in management/ board. The Registrar can refuse such changes and deregister organisations, directing them to re-register.
- The Registrar, who is a civil servant and part of the Public Service, is given very wide powers to interfere with activities of PVOs. The Registrar’s office reports and is controlled by the President. This can potentially affect independence of PVOs as they will not be able to speak freely on issues to avoid getting on the wrong side of the Registrar.³¹

If the Bill becomes law, the following are some of the potential results:

- PVOs will not be able to freely carry out their work;
- Human rights violations such as police brutality and political violence would increase without victims getting justice;

- Humanitarian work would be severely restricted;
- PVOs would not be able to continue with their work due to lack of funding and support from local and international partners; and
- Communities in distress will not get aid and services that they currently receive through the work of PVOs.

Regrettably, the Bill, if passed, would affect the work of all non-profit organisations working in Zimbabwe, including those providing life-saving assistance, religious charities, educational services, food aid, water and sanitation assistance, care for vulnerable children and more.

It limits rights like freedom of association, right to privacy and political rights, which are provided for in Zimbabwe’s Constitution. The Bill on the whole, will be disruptive of what CSOs can do, and will also rearrange the way CSOs have traditionally worked in the country.

31. Private Voluntary Organisations (Amendment) Bill, 2021 Factsheet, 7 December 2021, Zimbabwe Lawyers for Human Rights (ZLHR), Zimbabwe Human Rights NGO Forum, Legal Resources Foundation (LRF) and Kubatana, <https://kubatana.net/2021/12/07/private-voluntary-organisations-amendment-bill-2021-factsheet/>.



REFLECTIONS: ARE THE FEARS OF NGO CRACKDOWN UNFOUNDED?

At the end-of year reflection, some community activists asked if NGOs are not being paranoid about the PVO Bill. There were mixed messages in their communities. Others heard that the PVO Bill only affects human rights groups.

Thirty years of grassroots organising have taught us that when the government makes threats against NGOs, they usually carry them out. Under threat are not only human rights groups, but all charities and the majority of non-state actors including international humanitarian agencies who depend on local groups for coordinating aid operations.

In 2008, the government of Robert Mugabe accused humanitarian aid groups of campaigning for Morgan Tsvangirai and using food aid for political purposes. On 5 June 2008, the police and a mob of “war veterans”, detained and assaulted a group of U.S. and British diplomats for several hours at a roadblock north of the capital Harare. Despite lack of evidence to back these accusations, the government issued a directive for all aid groups to suspend operations. Care International was the main target of these operations against NGOs.

Today Zimbabwe is facing a watershed election in 2023 and similar accusations against civil society have started. It will be wrong for any group to think they are safe from the ferocity of the state against NGOs. Thus resistance must be collective.

PATRIOT BILL

Another harsh law being proposed to, among other things, deal with NGOs, is the Patriot Bill. On 4 August 2020, the Minister of Information announced after a Cabinet meeting that a Patriot Bill was recommended to Cabinet by the National Peace and Reconciliation

Commission (NPRC), in its 2018 and 2019 annual reports. It was highlighted that the NPRC had recommended that “*campaigning against one’s country*” should be legislated at law and “*criminalised*”.³² In a State media article on 4 October 2020, the Permanent Secretary in the

Ministry of Justice, Legal and Parliamentary Affairs, was quoted as stating that principles of the Bill had been drafted and were waiting presenting to Cabinet for approval.

She also stated the following:

32. It is important to highlight that nothing of this sort is captured in the NPRC’s reports of 2018 and 2019.

“The Bill is premised on the constitutional provision on the foreign policy of our country, which values the promotion and protection of the national interests of Zimbabwe. It is the duty of the State to engage other sovereign nations on issues pertaining to foreign relations, and not self-serving citizens”.

The Permanent Secretary indicated that acts which would be criminalised under the proposed law would include private correspondence with foreign governments or any officer or agent thereof, including false statements influencing foreign governments, and any other such conduct aimed at undermining the country. On conviction, she said, still punitive measures await. Aside from generalised references to the scope of the Bill, it was mentioned that the proposed Bill drew from similar legislation in other jurisdictions, such as the Logan Act in the United States of America. I will revert to this point shortly.

On 2 March 2021, the late ZANU PF legislator for Mberengwa South Alum Mpofu moved a motion on the proposed Patriotic Bill.

Then on 16 November 2021 a presentation was made by a Law Officer from the Ministry of Justice to the Parliamentary Portfolio Committee on Foreign Affairs and International Trade. In that presentation, MPs were told that the Ministry of Justice was in the process of amending the Criminal Code Codification and Reform Act to put in place this law, which “seeks to promote and protect the national interests of Zimbabwe which is pivotal to our foreign policy agenda. It also seeks to implement the principle of public international law principle which provides that matters pertaining to foreign relations with other sovereign nations involve the exercise of the power of the State and are not matters to be dealt with by means of self-serving citizens or private diplomacy or negotiations”.

According to the Law Officer:

The proposed law will include the following provisions which criminalize conduct that falls within the following broad categories;

- a) *Unauthorized private negotiations engaged in by citizens of Zimbabwe with a foreign government which directly or indirectly relates to the country’s foreign relations and policy with other sovereign nations;*
- b) *The making of false statements by any citizen of Zimbabwe with an intention of influencing any dispute or controversy between a foreign government and Zimbabwe.*

In recognition that such a law is constitutionally offensive, the Law Officer went in to state as follows:

- The law should be restricted to private negotiations that impact on *‘the promotion and protection of the national interests of Zimbabwe’*, (as provided for in s 12(1)(a) of the Constitution), including its foreign policy agenda but not negotiations by citizens on matters of purely private commercial interests; and
- The formulation of this law must be done in such manner that avoids taking away the rights of individual citizens seeking redress for harm suffered as a result of conduct by a foreign sovereign government, its agents or citizens.

The statement also says that in so doing, the government is resorting to

the Vienna Convention on Diplomatic Relations (1961), which it says, only recognizes States as legitimate players in foreign relations and negotiations. This is false. Article 2 of the Convention is what is cited, and that Article simply says that – *“The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent”*. According to the Law Officer, the Vienna Convention provisions *“confirm that private players have no business in foreign relations and negotiations between countries”*. Again, this is untrue.

According to the 16 November 2021 communication, drafting instructions were forwarded to the Attorney General’s Office for drafting of the Bill. The principles are not in the public domain, nor is there any draft version of the law in the public domain at this stage.

WHAT IS THE GOVERNMENT TRYING TO DO?

What the government is trying to do here, is a political agenda: it is narrative capture, and suspend rights to association, free speech, expression and access to justice. The concept of national interest considerations is common to sovereign nations. Every sovereign nation is entitled to protect its domestic integrity from external interference. The danger, however, lies in the blatant abuse of the law to meet individualistic and self-serving goals under the guise of promoting the national interest. The government has a consistent record of promulgating laws that are specifically designed to crack down on any form of perceived dissent in the country. It is against this backdrop that the proposed Bill seeks to be enacted.



THE PROPOSED LAW FALLS TO BE CRITICIZED FOR VARIOUS REASONS:

- **Violation of rights** - Rights likely to be infringed by the proposed law include assembly and association; right to petition; freedom of conscience; freedom of expression; and political rights – which include the right to to campaign freely and peacefully for a political party or cause.
- **False comparative and equivalence** – The comparison with an America law is both bizarre and ironic. The Logan Act is the cited comparator. This is a 220-year-old law, that was enacted to punish perceived political adversaries for attempting to get involved in international politics. The Logan Act makes it a federal crime for a private American citizen to engage in any communication or correspondence with a foreign government that intervenes in a dispute with the United States in order to “defeat” any measures by the U.S. The Logan Act has only been utilised in two indictments and not a single successful prosecution in the past two centuries. In the two circumstances where it was invoked, it was done so purely to penalize political speech.

In America, the disuse of the Act has been predominantly attributed to two considerations. The first is that the Act undermines the right to freedom of expression, with the adoption of the First Amendment to the American Constitution. The principle of constitutional supremacy renders the constitutional provision supreme. The second is that the Act was created as a political tool between two opposing political ideologies, as opposed to nationalistic considerations.

American scholarly sentiment towards the Logan Act has characterised it as an “embarrassment”, an “eighteenth century relic”. The Logan Act in fact is not what the American call the Patriot Act. These two laws are separate. The USA does have its own Patriot Act, a statute that was enacted in October 2001 as a response to the September 11 terrorist attacks. Its complete name is “*Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism*” Act of 2001. As is clear from the name, that the aim of this Act is to discourage and punish terrorist acts within the USA and elsewhere, and





to boost USA law enforcement investigatory tools against organised crime, drug trafficking and terror crimes.

- **A weapon for strategic lawsuits against public participation (SLAPPs)** - Rule of law denotes the supremacy of the law, and not supremacy of those who control the law. Rule by law on the other hand is a wholly different phenomenon. This is when the law is weaponised, and the State engages in strategic lawsuits against public participation (SLAPPs), as we are seeing.
- **Overregulation** - This includes the State threatening everyone with arrest. When we have too many laws, it is the rule of law that suffers, as ably argued by Ilya Somin in his Washington Post instalment of 2 October 2017 titled *‘Why the rule of law suffers when we have too many laws’*. Somin argues, when a state of overregulation ensues, “the authorities can pin a crime on the overwhelming majority of people, if they really want to. Whether you get hauled into court or not depends more on the discretionary decisions of law enforcement officials than on any legal rule. And it is difficult or impossible for ordinary people to keep track of all the laws they are

subject to and to live a normal life without running afoul of at least some of them”. The law is clearly being weaponised here.

- **Vague law** - One thing likely to happen is that the law will be couched in a vague manner, which would leave the arresting, prosecuting and adjudicating authorities to read into that law many strange things. This provides the flexibility to invoke the law against whoever the government wants. It is a law that will be used to targets opponents, critics and those in the opposition. Vague laws provide an opportunity or a window for anyone whom the government so pleases to be arrested. Yet it is a fundamental tenet of rule of law that the principle of legality must be adhered to, and its prescription of legal clarity and certainty. In the enforcement thereof, there ought to be avoidance of arbitrariness, fairness in the application of the law, equality before the law, and procedural and legal transparency. The general and sweeping nature of the proposed Bill is a cause for concern as it appears that it would be applicable to any citizen, civil society organisation and political opponent/party. There does not appear to be a delineation of what

would constitute unacceptable private correspondence with foreign governments, save for what is determined by the government. This is particularly of concern to the work of human rights related organizations, whose mandate it is to observe, bring attention to and seek redress for human rights violations.

The Patriot Bill will affect private citizens, civil society and opposition political players. To civil society, this is one of the greatest existential threats thrown to them since the so-called new dispensation came into being. Civil society works with foreign governments and regional and international organisations, and in the case of Zimbabwe, all funding comes from foreign government donor agencies and multilateral institutions. To opposition political entities, this is crippling to their foreign policies and engagements in a manner never seen before in our post-independence history. The cumulative effect is to amputate democracy.

The cumulative effect of all these laws is to stifle speech and expression which viewed as contrary to the interests of the government of Zimbabwe. The government is clearly conflicted in bringing about this law: government is predominantly the perpetrator of human rights violations in the

country. The same government is seeking to silence anyone who speaks of the human rights abuses to the world. It is a way of concealing the violations and misgovernance, and to try and manipulate the narrative. At the heart of it all is consolidation of power.

PROVINCIAL DEVELOPMENT COORDINATORS' DIRECTIVES

On 21 June 2021 the Provincial Development Coordinator (PDC) for Masvingo Jeter Sakupwanya issued a directive requiring all youth NGOs in the province to sign a Memorandum of Understanding (MOU) with the Ministry of Youth, Sport, Arts and Recreation in the Province regardless there was an existing MOU or not. In his memorandum the PDC stated that failure to comply with the directive would result in the cancellation of the NGOs authority to operate in any particular district that the NGO would be operating. In a press conference on 21 June 2021, ZANU-PF acting political commissar Patrick Chinamasa attacked NGOs and blamed them for undermining the country's political, economic, and judicial systems. The attack by Patrick Chinamasa follows the accusations by the Minister of Justice Ziyambi, on 16 May 2021, that NGOs had captured the judiciary after the High Court had ruled that the term

of office of the Chief Justice had lapsed on 15 May 2021.

On 30 June 2021, the PDC of Harare Tafadzwa Muguti issued a memorandum to all NGOs operating in Harare directing that the operations and clearance of NGOs was now domiciled in his office. He further directed that all NGOs should submit work plans for 2021 and information on workshops, commissioning of projects, monthly reports and any other pertinent information to his office by the 9th of July 2021. He also further directed that all NGO country directors make courtesy calls to his office and that of the Provincial Minister. In both memorandums by Masvingo and Harare Provinces, the two PDCs do not state the law in which they make such directives. The Zimbabwe Human Rights NGO Forum, Crisis in Zimbabwe Coalition and the Zimbabwe Lawyers for Human Rights, successfully approached the High Court which interdicted the Harare PDC on 18 September 2021.

The Constitution of Zimbabwe, 2013 provides in section 68 that every person has the right to Administrative Conduct that is lawful. The powers that the Provincial Development Coordinators purported to exercise are not lawful. Such powers are not provided for by any law and hence the conduct is ultra vires the Constitution.

Earlier in 2019, the District Administrator of Masvingo purported to suspend the activities of local NGO Community Tolerance Reconciliation and Development (COTRAD). COTRAD filed an Urgent Chamber Application with

the High Court in Harare arguing that the District Administrator did not have the powers that he purported to exercise in suspending COTRAD activities in order to verify its registration status. The High Court declared the purported

suspension as null and void and ordered that COTRAD could resume with its activities because it was registered as a trust and not as a PVO.

REFLECTION

REFLECTION: RULE BY LAW VS RULE OF LAW

“The Rule of Law is supposed to lift law above politics. The idea is that the law should stand above every powerful person and agency in the land. Rule by law, in contrast, connotes the instrumental use of law as a tool of political power.”³³

These cases listed above give an impression that the Government of Zimbabwe is law-abiding. They use a strategy that is famous with authoritarian regimes. They first challenge the citizens with an unlawful directive. Then the court issues a ruling against the unlawful actions. What then follows is the creation of a draconian legislation to create the basis for a previously unlawful action. Then they do what they have always wanted to do, now with the backing of the law. That is rather rule by law, rather than rule of law. This is when the law is created to advance a pre-conceived objective of the powerful members of the society like politicians.

The cases here show instrumentalization of the law by the powerful against the weak.

OTHER PREVIOUS CONDUCT TO LIMIT CIVIC SPACE

In the past, the government has used the PVO Act to dissolve leadership of CSOs, in a similar way being proposed now in the PVO Amendment Bill of 2021. When the moribund Association of Women's Clubs (AWC) became active in speaking for the rights of women

against the increasingly repressive Mugabe government, the leadership was gazetted and banned from AWC by the government using the then section 21 of the PVO Act. Sekai Holland, then AWC's Chairperson, made a successful Supreme Court challenge against the government's

action and won, in the case of Sekai Holland and Eleven Others v Minister of Public Service Labour and Social Welfare SC IS/97, ZLR (8).

On 22 November 2013, the Magistrates Court in Harare acquitted the then Executive

33. Waldron, J. (2016). The rule of law.

Director of the Zimbabwe Human Rights NGO Forum, Mr Abel Chikomo, who had been on trial for allegedly running an “unregistered” organisation in contravention of the Private Voluntary Organisation (PVO) Act. Mr Chikomo was charged for running an ‘illegal’ organization after his organisation conducted a legitimate and lawful survey on transitional justice in Harare’s Highfield suburb. It took almost three years to bring him to trial, with the case being postponed several times in a move seen as attempts to harass Chikomo by keeping his life in limbo and interfering with his right to privacy and exercise of his profession. In acquitting Chikomo, the Magistrate noted that this was a case that should not even have been brought before the court because there was no evidence or merit. Section 2 of the PVO Act exempts “*anybody or association of persons, corporate or unincorporated the benefits from which are exclusively for its own members*”. The Zimbabwe Human Rights NGO Forum is an association and common law universitas (entity) of 20 member organisations.

Under the law that governs registration of non-governmental organisations in Zimbabwe currently, common law universitas are allowed to operate without registration. The Zimbabwe Human Rights NGO Forum had been



a common law universitas. The use of the membership form known as “universitas” originates from common law practice of recognizing an organisation, which has members, a constitution and activities that are entirely for the benefit of its members. Such an entity is excluded from registering under the PVO Act and is therefore not viewed as a PVO, but as the corporate form “universitas”.

Similar incidences related to registration of NGOs also occurred in 2012 and 2013. On 11 August 2012 police arrested 44 members of the Gays and Lesbians of Zimbabwe (GALZ) after the launch of their annual report on human rights violations. The Board Chairperson of GALZ, just like the Forum Director, also faced charges of operating an unregistered organisation. On 7 March 2013, police renewed their onslaught against prominent human rights campaigner Jestina Mukoko

by summoning her to report at Harare Central Police Station for allegedly operating an “unregistered” organisation, the Zimbabwe Peace Project.

Apart from the registration-related cases, Zimbabwe government’s history of treating NGOs has a very dark underbelly. Several civil society functionaries have been arrested for protecting, for expressing their opinions, and for being alleged to be working to topple government. Beyond attacks to established CSOs, individual journalists such as Hopewell Chin’ono, political leaders in the opposition, and activists such as Namatai Kwekweza and Tsitsi Dangarembga, have between 2020 and 2021 been arrested and charged for material they have tweeted, or peaceful demonstrations that have held, including solo demonstrations. All that is blatant evidence of constructed and constructing democratic and civic space.



INTERPLAY BETWEEN *the national and grassroots civic space*

Processes that happen at the national level affect what grassroots groups are able to do. When civic space is threatened, CBOs and grassroots movements must equally be concerned. Civic space and how it is utilised, have a direct bearing on local development, thus is it not merely an issue of political participation at stake. Limited civic space restricts the ability of citizens to participate in public life and speak truth to power.

This constrains one of society's primary tools to prevent political capture of the state and its resources. Addressing poverty and rising inequality therefore requires average citizens and the organisations that represent them to have the legal, political and social space to operate and influence the policy agenda. Achieving this requires that governments, donors, private sector, civil society and citizens, work together to protect, nurture and

celebrate civic space. Promoting civic space does not tacitly imply that civil society should be unregulated and free from government oversight. On the contrary, reasonable regulation is legitimate, necessary and can enhance effectiveness and accountability in the sector. Yet any regulation must not be overly burdensome, driven by political motives and designed to stifle independent voices.

REFLECTIONS: CAN A NATION THRIVE WITHOUT ACTIVE CITIZENSHIP?

“Growing evidence confirms that under the right conditions, citizen engagement can help governments achieve improved development results in creating links between citizen engagement and improved public service delivery, public financial management, governance, social inclusion and empowerment.”³⁴

WORLD BANK

In Zimbabwe, many of the rural communities have benefitted from international development. With increasing economic distress, NGOs have stepped forward to avert a catastrophic humanitarian crisis. As late as November 2021, the World Food Programme took up the begging bowl asking the world to donate USD65 million to save Zimbabwe from food insecurity. This headline comes every year as the world steps in to help the people. This is evidence that the work of NGOs is not luxury but a matter of life and death. The evidence of 2008 when Care International was asked stop its operations by the Mugabe regime is evidence that the war against NGOs will not spare NGOs in the humanitarian sector. In fact, it will intensify as Zimbabwe gets closer to the elections.³⁵

Beyond humanitarian support, governance and development requires active communities in order for it to make sense to those communities.

34. See report, Engaging with Citizens for Improved Results available here: https://consultations.worldbank.org/sites/default/files/materials/consultation-template/engaging-citizens-improved-resultsopenconsultationtemplate/materials/finalstrategicframeworkforce_4.pdf

35. See full report on VOA link here: [https://www.voanews.com/a/wfp-65-million-needed-to-ease-zimbabwe-food-insecurity-/6305723.html#:~:text=The%20World%20Food%20Program%20\(WFP,food%20shortages%20in%20coming%20months](https://www.voanews.com/a/wfp-65-million-needed-to-ease-zimbabwe-food-insecurity-/6305723.html#:~:text=The%20World%20Food%20Program%20(WFP,food%20shortages%20in%20coming%20months)

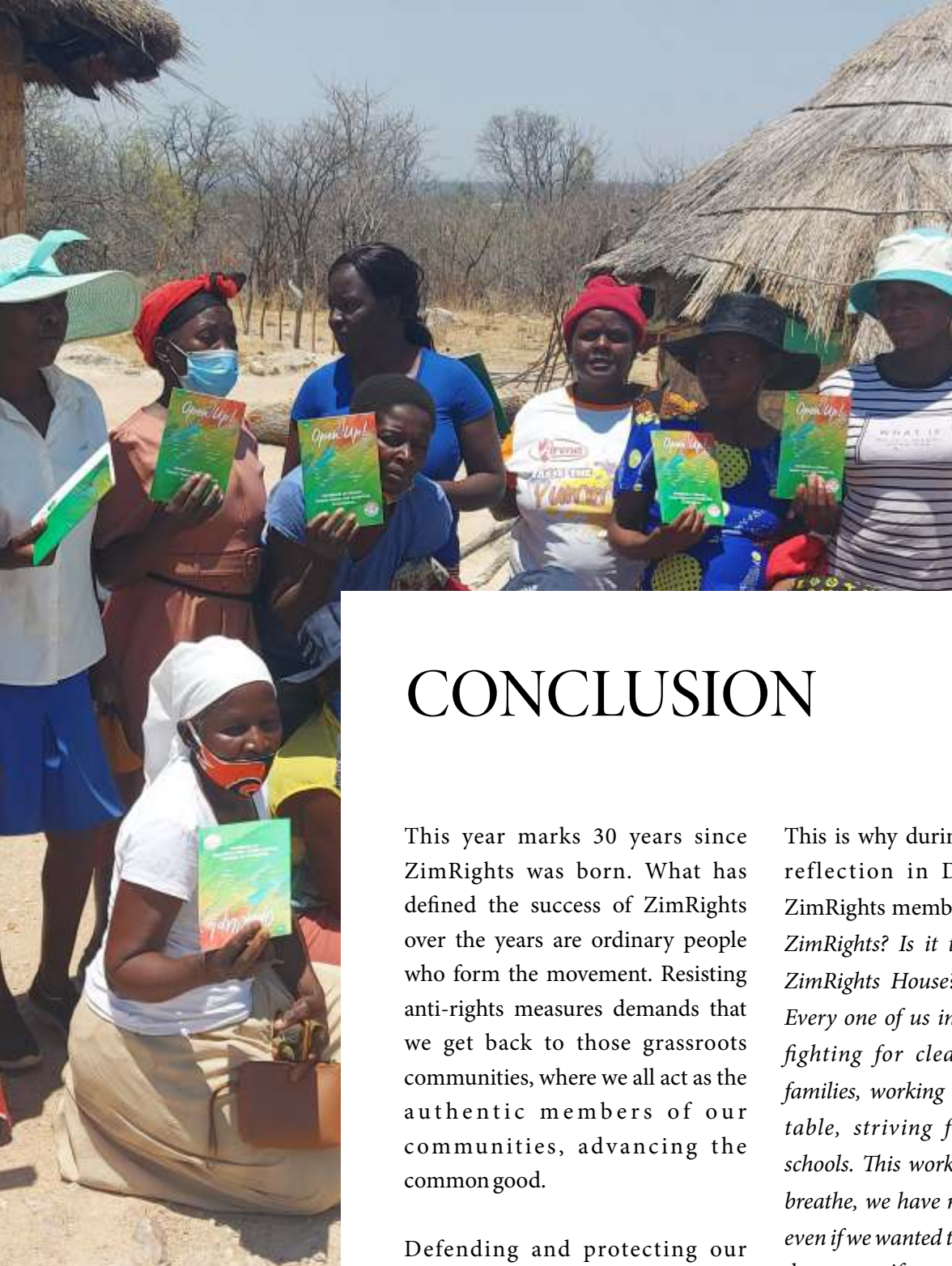
RECOMMENDATIONS

The following are recommendations to the authorities in Zimbabwe:

- The State and its functionaries should desist from perceiving CSOs as adversaries, but as partners in the quest for good governance, rule of law, protection of human rights, development and the welfare of the Zimbabwean people.
- The PVO Amendment Bill of 2021 must be withdrawn. The Bill does not in any way advance Zimbabwe's constitutional democracy, but instead limits what citizens can do either collectively or individually. Neither does the Bill achieve meaningfully what it is set to achieve, which is to protect CSOs from falling victims to terrorist financing and money laundering, per the FATF Recommendation 8. The Bill will also have foreseeable unintended economic consequences for the nation at large.
- Proposed regressive laws that include the Patriot Law must be abandoned. These regressive laws are cutting back on the constitutional promise, and are contributing to creating a repressive and authoritarian state, premised on overregulation and abuse of the law and the legal system. This is weaponisation of the law against perceived critics. Patriotism cannot be legislated in a penal law, and neither is the divisive rhetoric of creating heroes and villains, patriots and sell-outs, benefit our nation in anyway.
- Negative and propagandist rhetoric against CSOs must cease. This discourages participation and engagement, and also places the security of CSOs and their functionaries at risk.
- The work of CSOs must be actively promoted as part of dealing with our past of violence and conflict, and building a future of peace and tolerance. Constricted civic space generally leads to conflict, as that means channels of addressing grievances and concerns and of resolving these, are limited or disrupted. The work of CSOs must be seen from the development lenses, as opposed to political power-play lenses.

WHAT GRASSROOTS CSOS CAN DO TO PUSH BACK ON ATTEMPTS TO CLAMP DOWN CIVIC SPACE

- **Get citizens engaged** – Citizens in their individual and collective spaces must act to defend civic space. Where civic space is threatened, citizens are the biggest victims. Apathy and disengagement will aid to democratic regressive, particularly where the government of the day is pre-occupied with political power consolidation.
- **Narrative shaping** - CSOs must push back on narratives about CSOs being anti-government, non-patriots and foreign agents. This is simply untrue, but because of the narratives driven by the government, many have started to believe the propaganda and to perceive NGOs on the light cast by the government. In doing their work, CSOs, including CBOs, are complementing what government is doing as a partner. Government cannot do everything and not all must be left to government. It is in fact irresponsible citizenship to do so. The reality in Zimbabwe is that government has been one of the major beneficiaries from the work of NGOs. NGOs have done cover up work in many ways for government's failures. Thus the great work that CSOs and CBOs are doing must be spotlighted. Many organisations have worked ceaselessly, including lending their expertise in aid to the government-led fight against COVID-19.
- **Grassroots organisations must mobilise and participate in public hearings to speak against the PVO Amendment Bill.** While many question the efficacy of public hearings in law-making, these have in the past bore fruit. A good example is the withdrawal and subsequent amendment of the National Peace and Reconciliation Commission (NPRC) Bill, following a public outcry. Local communities and grassroots movements, being closer to the people, must be mobilised to make submissions to their local representatives in Parliament, and to directly participate in the public hearings scheduled for 2022. The dates for the public hearings as of December 2021 are unknown, following a postponement from the original December 2021 schedule.
- **Pushback on all regressive law reform, which includes the mooted Patriot Bill.** This includes all laws that seek to take away the defining rights of civic space, among them freedoms of assembly and association.
- **Monitor and document the negative impact of constricted civic space to communities,** including the economic cost of such. This allows for a full understanding of how the civic space dynamics are affecting development, both locally and nationally. It also allows for evidence-based interventions in advocacy.
- **Motivate for a government-CSO platform for regular engagement.** While some CSOs at both national and local levels work with government directly and indirectly, and at various levels, there may be need for a standing platform dedicated to facilitating interface between government and civil society on issues of concern. This would be a platform where issues such as regulation would be raised and discussed, with proper consultations taking place. Grassroots movements may contribute to pushing for the realisation of this.



CONCLUSION

This year marks 30 years since ZimRights was born. What has defined the success of ZimRights over the years are ordinary people who form the movement. Resisting anti-rights measures demands that we get back to those grassroots communities, where we all act as the authentic members of our communities, advancing the common good.

Defending and protecting our communities requires no licensing. It is the inherent right of every community to defend the values that shape their being. For us, human rights and fundamental freedoms are values that we must defend without need for permission.

This is why during the end of year reflection in December 2021, ZimRights members asked, “*Who is ZimRights? Is it the building called ZimRights House? No! It is people. Every one of us in our communities, fighting for clean water for our families, working to put food on the table, striving for hospitals and schools. This work, for as long as we breathe, we have no capacity to stop, even if we wanted to.*” Such people, are the great gift to their communities and to the nation. Any law that asks them to sit back is seeking to extinguish the flame that make communities tick. It is an attack on active citizenship.

TEN THINGS TO REMEMBER

from this Report About the PVO Bill and Shrinking Space

① While the Private Voluntary Organisations Amendment Bill (PVO Bill) is ostensibly gazetted to fulfil Financial Action Task Force (FATF) Recommendation 8, the reality is that the Bill does little on the issue of money laundering and terrorist financing (MF/TF), but more on restricting the work of all PVOs, and not just those that are deemed to be at risk of ML/TF. The Bill deliberately focuses on unintended consequences of the FATF Recommendation.

② The PVO Amendment Bill is not simply about PVOs. It is about civic space, a much bigger issue affecting all of us as citizens.

③ Civic space is that space where citizens come together to act and advance the issues affecting their community which they care about. It is about accountability and participation in governance.

④ Civic space is not a gift from the government. It is a right that is protected by both domestic law and international law. It must be defended. See sections 58 and 67 of the Constitution of Zimbabwe.

⑤ While you may read about a few outspoken human rights NGOs in the press, there is a whole range of NGOs doing a lot of good work that our communities cannot do without. These services range from provision of clean water to building schools in marginalised communities. All these services are under threat as a result of the Bill, and it is communities that stand to be disadvantaged.

⑥ Threats against NGOs are not only against NGOs working on human rights and governance. They are threats against all NGOs as evidenced by the 2008 crackdown when the government asked an international humanitarian group to shut down operations depriving thousands of much needed food.

⑦ Many CSOs are not opposed to regulation of the civic space. They believe in self-regulation in order to maintain independence. The government should not have absolute power to control the operations of CSOs because this compromises independence and accountability.

⑧ Civic engagement is not about regime change. It is about inclusive governance and economic growth. Citizen engagement can help governments achieve improved development results in creating links between citizen engagement and improved public service delivery, public financial management, governance, social inclusion and empowerment.

⑨ Communities are not passive. They are active and creative with capacity to defend their interests. Cases from Chivi and Siakobvu show that. This report shows that organised communities do better on their own to defend their interests than national leaders who are divorced from local problems.

⑩ This report recommends to the government a roll-back on anti-CSO propaganda. It recommends citizens to defend their space to organize. It further recommends a dialogue platform for government and CSOs to promote mutual understanding and a progressive approach to CSO regulation.



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ABOUT ZIMRIGHTS

The Zimbabwe Human Rights Association (ZimRights) is an indigenous non-profit, non-governmental organisation registered under the Private Voluntary Organisation Act. It was formed in 1992 and registered in 1993 for the sole purpose of insuring that Zimbabweans are ensured of their rights as citizens and are equipped and empowered with the knowledge to defend their rights.