

Civil Society Registration Laws: Malign or Benign?



Legal Assistance Centre
Input on Draft Civic Organisations Partnership Policy
December 2022, revised February 2023



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1. Introduction

Vision 2030 calls for civil society to cooperate with Government at local, regional, and national levels to consolidate democratic ideals and create synergy in development efforts, with the goal of maximising social and economic benefits.

To this end, the National Planning Commission proposed a draft Civic Organisations Partnership Policy in 2005, which was again under discussion in 2022.¹ On 13 October 2022, a consultation was organised in Windhoek, where representatives of civil society were invited to discuss the Civic Organisations Partnership Policy as part of a larger series of consultations country-wide. During this discussion, representatives of the Legal Assistance Centre and some other non-governmental organisations (NGOs) elaborated their criticisms regarding the policy and particularly the concept of NGO registration.² This paper is an expanded version of the paper provided during that consultation.³

The Civic Organisations Partnership Policy was originally accompanied by a draft Partnership Bill. Although this draft bill is now outdated, it gives an idea of how the policy might be applied via legislation.

This paper opens with a brief summary of the worrying points in the draft policy and a short overview of the draft bill. To contextualise our concerns, we have examined the experience with civil society regulation and registration in other countries in Africa. The paper then discusses the risk of money-laundering by NGOs and methods which could be used to address that issue without compromising civil society space. It ends with short conclusions and recommendations.

2. Key concerns regarding the draft policy

The overall goal of the Civic Organisations Partnership Policy is to create a “Working Partnership” between Government and civil society. It identifies the following four different objectives as steps toward this end:

1. Creating greater commitment to civic participation by citizens;
2. Enhancing the environment for civic participation and partnership with Government;
3. Bringing Government closer to the people and creating partnership opportunities that benefit the Government, civic organisations, and civil society;

¹ National Planning Commission, *Government of the Republic of Namibia Civic Organisations Partnership Policy*, December 2005.

² See the report on the consultation process: *Review of the Government of the Republic of Namibia Civic Organisations Partnership Policy (GRN-COPP): Final Report*, “Enhancing Participatory Democracy in Namibia” (EPDN), a Partnership Programme of the Government of the Republic of Namibia and the European Union”, November 2022.

³ The paper was written for LAC by Dianne Hubbard and Livia Häberli.

4. Enhancing the capacity of partners (Government and civic organisations) to enter into partnerships and jointly respond to development challenges and opportunities in an efficient, effective and sustainable fashion.

While these general objectives are positive in themselves, a worrying factor is the theme of Government involvement in mobilising, shaping, and influencing civil society – which is, by definition, separate from Government.

The policy, on the one hand, acknowledges the diversity and independence of civil society – but on the other hand, it proposes an excessive level of Government involvement such as Government-spearheaded campaigns to encourage civic involvement, Government-facilitated networks that can assure the “legitimacy” of specific NGOs, and a regulatory environment with the goal of “eliminating undue competition and overlapping mandates”.

The policy assigns inappropriate roles to civil society, such as its description of NGOs as “national development agencies” that are “intermediary organisations between local communities and other development actors, such as Government, International Development Partners, and the private sector”. The policy also talks about measurements of the impact of the “development initiatives” of civic organisations, to evaluate their impact on the livelihoods of people – without recognising that it is entirely appropriate for civil society to act in opposition to “development initiatives” that might threaten the environment or interfere with human rights. Supporting development is not the sole objective of the NGO community, where NGOs may (for instance) act as watchdogs that *oppose* initiatives that are not considered to be in the public interest.

Civil society by its very nature must develop organically and remain free from government agendas so that it can cooperate or criticise as the situation requires.

There is nothing wrong with encouraging appropriate partnerships between Government and civil society, and the emphasis on increased information sharing is welcome. For example, Government newsletters and tender bulletins that provide information to civil society on partnership opportunities would be welcome, and the idea of a “partnership help desk” at the National Planning Commission Secretariat sounds like an initiative that could positively enhance channels of communication.

But the encouragement of partnerships between Government and civil society on specific initiatives does not require an overarching, statutory regulatory scheme or excessive Government involvement in civil society in general.

3. Overview of draft Partnership Bill

A consideration of the draft Partnership Bill which was proposed to further the policy helps to clarify how the policy might be manifested.⁴

⁴ Draft Partnership Bill, dated 2008 (on file with the Legal Assistance Centre),

The objectives stated in the draft bill are to encourage partnerships and collaboration between Government and civic organisations in Namibia by providing for registration by civic organisations that are willing and able to work in partnership with the Government, to provide a legal framework within which the Government and civic organisations can enter into partnership arrangements, and to make Government support mechanisms available to registered civic organisations.

The proposed Registry would be the Partnership Help Desk within the National Planning Commission Secretariat. The Director General of the National Planning Commission would designate a Registrar from amongst the staff of the National Planning Commission Secretariat, and designate or appoint staff to assist the Registrar.

The Registrar would be responsible for registering civic organisations; updating the register as necessary; maintaining a database on registered civic organisations; processing and analysing data on registered civic organisations; making this data and analysis available for use in decision-making processes, especially in respect of partnerships between Government and any registered civic organisation; and extending support to any registered civic organisation.

A civic organisation would apply for registration by submitting an application to the Registrar. This application would require various documents, including -

- an organisational profile
- a profile of the organisation's office bearers, key staff, and volunteers (including their names, addresses, qualifications, and areas of expertise and experience)
- narrative and financial reports of the organisation's activities (including audited accounts for the preceding two years)
- the organisation's staff handbook and financial guidelines.

Registration would not affect the legal status of the civic organisation.

Information about all registered civic organisations would be kept in the registry. To keep the registry updated, registered civic organisations would have a duty to provide certain information and/or documents after the end of every financial year or if there are any changes in the organisation. Failure to do so could result in the suspension of the registration.

Registration and updates would be free of charge. The information in the registry would be open to the public, upon payment of a fee.

The idea is that registration would have certain benefits for registered civic organisations. The registered civic organisation would qualify to be invited to work in partnership with the Government in any programme or area, on such terms as the Government and the civic organisation agree – which could entail access to unspecified “benefits and allowances” for the civic organisation.

One of the key questions here is why advance registration is needed as opposed to simply providing information if and when a partnership with Government is sought.

4. African trends in NGO registration and regulation

In recent years, several countries have enacted laws and regulations aimed at supporting civil society organisations, or begun a process of developing such legislation. Many governments, however, are suspicious of civil society and are drafting, enacting and applying laws that restrict or narrow civic space. In recent years civil society organisations around the world have had to confront restrictive laws and policies that reinforce this backlash against civil society. This trend has found fertile ground in Africa and the number of restrictive laws is on the rise.⁵

In Africa, this trend arguably springs from the historical role that civil society played in ridding the continent of politically-oppressive colonial and apartheid regimes and the fear that similar citizen action could be a threat to current regimes that have not fulfilled democratic ideals.⁶ Thus, many laws enacted or proposed in the region are intended to maintain tight government oversight and control over the activities and structure of civil society organisations. This global trend has been “characterised by a profound shift from outright repression of democracy, human rights, and civil society activists and groups to more subtle government efforts to restrict the space in which civil society organisations...operate.”⁷

Such subtle efforts may take the form of burdening civic organisations with administrative hurdles, such as introducing mandatory or burdensome registration and re-registration, requiring a large number of founders, or introducing government supervision and monitoring. They may also hamper civil society by limiting access to foreign funding or forbidding the employment of non-citizens.

In some African countries, more overtly restrictive laws prohibit civil society involvement in political activities, such as funding, supporting or providing material assistance to political parties or candidates, or engaging with politically-sensitive issues.⁸

4.1 Registration and re-registration of civic organisations

Several laws and draft laws in Africa require informal groups of persons to register as formal legal entities and prohibit them from conducting activities unless they do. By prohibiting any associational activities – even informal activities, such as a group of neighbours meeting weekly to discuss political events – without prior registration, these laws infringe upon the right

⁵ Godfrey Musila, “[The Spread of Anti-NGO Measures in Africa](#)”, Freedom House, 2019, page 12.

⁶ See “[NGO Laws in Sub-Saharan Africa](#)”, *Global Trends in NGO Law*, Volume 3, Issue 3, June 2011; Bhekinkosi Moyo, “[The Legislative Environment for Civil Society in Africa: a Synthesis Report](#)”, Trust Africa, 25 May 2009.

⁷ “[NGO Laws in Sub-Saharan Africa](#)”, *Global Trends in NGO Law*, Volume 3, Issue 3, June 2011, page 2.

⁸ Godfrey Musila, “[The Spread of Anti-NGO Measures in Africa](#)”, Freedom House, 2019.

to free association protected by the International Covenant on Civil and Political Rights and other international conventions.⁹

Some legal frameworks also envisage periodic renewal of NGO registration. This creates room for abuse; groups that hope to continue their legal existence must often tread carefully around sensitive topics.

Additional opportunities for violations of the freedoms of association and assembly appear where security personnel, usually intelligence officials, are inserted into the registration process – usually to “clear” applicants, as is the case in some of the States surveyed – or where applicants require documents such as “certificates of good conduct”, “recommendation letters,” or “clearance letters” from agencies other than the one that issues operating licenses. Opportunities for inordinate delays also abound in such cases.¹⁰

The fundamental question is whether any registration system should be required at all, even if it is ostensibly voluntary. If any form of registration is introduced, to avoid infringements of human rights, Governments need to ensure that registration procedures are transparent, accessible, non-discriminatory, expeditious and inexpensive; include a possibility to appeal the denial of registration; avoid requiring re-registration; and conform to international human rights law. Reporting requirements should not inhibit civil society organisations’ functional autonomy.¹¹ We believe that it is doubtful that a registration system can be established without failing to meet these requirements in practice, if not in theory.

4.2 Government supervision and monitoring

Laws regulating civil society may lead to broad government supervision and monitoring, such as through the introduction of extensive investigatory powers. Several laws of this nature in the region grant government authorities the right to interfere in an NGO’s internal governance and management.¹² Many countries in the region require NGOs to obtain prior authorisation or approval before undertaking programme activities.

Such provisions are part of a growing and ominous trend where governments have distorted measures adopted by the international community to strengthen international development

⁹ “[NGO Laws in Sub-Saharan Africa](#)”, *Global Trends in NGO Law*, Volume 3, Issue 3, June 2011, page 3; Godfrey Musila, “[The Spread of Anti-NGO Measures in Africa](#)”, Freedom House, 2019; “[Report of the Special Rapporteur on Peaceful Assembly and Association, Maina Kiai](#)”, UN Human Rights Council, 21 May 2012, paragraphs 58–62.

¹⁰ See African Commission on Human and Peoples’ Rights, “[Report of the Study Group on Freedom of Association and Assembly in Africa](#)”, 2014, paragraph 15.

¹¹ Helen Nolan, “[Protecting Those Who Protect Human Rights: Opportunities and Risks for Action at the UN](#)”, Stimson Centre, page 96. (The Stimson Centre describes its mission as being to promote international security and shared prosperity through applied research and independent analysis, global engagement, and policy innovation.)

¹² Some laws encourage Government harassment through repeated inspections and requests for documentation. See “[NGO Laws in Sub-Saharan Africa](#)”, *Global Trends in NGO Law*, Volume 3, Issue 3, June 2011, pages 7-8.

efforts, such as the *Paris Declaration on Aid Effectiveness* (the *Paris Declaration*) and the *Accra Agenda for Action* (the *Accra Agenda*).

In 2005 the *Paris Declaration* was endorsed in order to base development efforts on first-hand experience of what works and does not work with respect to aid. It is based on five central pillars: Ownership, Alignment, Harmonisation, Managing for Results, and Mutual Accountability.

In 2008, at the Third High Level Forum on Aid Effectiveness all OECD donors, more than 80 developing countries and around 3 000 civil society organisations from around the world joined representatives of emerging economies, the United Nations, multilateral institutions and global funds in the negotiations leading up to and taking place during the Accra meeting. The *Accra Agenda* was endorsed with the unanimous support of over a hundred countries and international organisations, reaffirming the commitment to the *Paris Declaration* and calling for greater partnership between different parties working on aid and development.¹³

However, in the ensuing years, the visibility of the *Paris Declaration* has been reduced due to numerous obstacles, such as the assumption that countries and organisations were more homogeneous than they actually were, either then or now, and due to the (unexpectedly) uneasy relationship between the key principles that have led to trade-offs and diverse interpretations of the effectiveness agenda.¹⁴

However, the principles of the *Paris Declaration* remain relevant; measures detrimental to these principles have been used as an excuse to restrict independent funding and to funnel aid through government-endorsed programmes. In the most extreme cases, governments have instituted a complete ban on certain NGO activities.¹⁵

In other cases, regulatory laws may require that NGO activities be aligned with government developmental priorities. They may impose onerous obligations on NGOs to periodically provide information such as minutes of meetings, financial data, and project plans, or require NGOs to grant officials access for impromptu on-site visits and searches. They may also give broad powers to government officials at multiple levels to monitor and evaluate NGO projects and activities. In some cases, the mandated frequency and extent of reporting to designated government bodies – monthly, quarterly, or annually – impose heavy burdens on NGOs and may constitute unnecessary interference.¹⁶

¹³ See “[Paris Declaration and Accra Agenda for Action](#)”, Organisation for Economic Co-operation and Development (OECD).

¹⁴ See Erik Lundsgaarde & Lars Engberg-Pedersen, “[Has the Paris Declaration Disappeared?](#)”, Danish Institute for International Studies (DIIS) Policy Brief, 11 July 2019.

¹⁵ “[NGO Laws in Sub-Saharan Africa](#)”, *Global Trends in NGO Law*, Volume 3, Issue 3, June 2011, pages 8-9.

¹⁶ Godfrey Musila, “[The Spread of Anti-NGO Measures in Africa](#)”, Freedom House, 2019, page 14.

4.3 Consequences of laws that restrict civic space

Measures such as burdensome registration and re-registration and extensive government supervision and monitoring may well violate fundamental human rights – in particular those relating to the freedoms of association, assembly, and expression. In Africa, as in other regions of the world, restrictions that hamstringing NGO activity typically form part of a broader strategy to narrow democratic space and prevent challenges to the rule of strongmen and governing parties. This phenomenon is deeply concerning because the vibrancy of organized civil society has a direct bearing on the capacity of citizens to hold governments accountable and to protect human rights in settings where authorities turn too easily to repressive means.¹⁷

One of the most damaging types of anti-NGO measures, adopted in various forms across Africa, is the limitation or prohibition of foreign funding. Under the 2009 Charities and Societies Proclamation in Ethiopia, for example, NGOs that received more than 10 percent of their funds from foreign sources were designated as “foreign agents.” This effectively placed them under the watch of security agencies and could justify an additional layer of restrictions.¹⁸

Even when not stated explicitly, an overarching objective of restrictive legislative measures is to weaken voices that call for accountability. It is not surprising that in countries where such laws were adopted or are being considered, democracy is said by scholars to be in retreat, with curbs on independent media and political opposition. Constraints on civil society activities often aim to weaken coalitions between opposition parties and civil society, which impedes democratic development.

Even ostensibly benign registration policies for NGOs are susceptible to abuse by governments. Their misuse can hinder democracy and may force NGOs, especially foreign ones, to cease their activities or to refrain from political activities in order to secure their registration or re-registration and hence their existence. This may also weaken the position of the most vulnerable members of society who often lack any political advocates apart from civil society organisations.

5. Examples of NGO registration schemes in other African countries

5.1 Egypt

Egypt adopted NGO-curbing legislation in 2017 and again in 2019 – with the 2019 law being even harsher than the widely criticised 2017 one, although it did reportedly relax Government control over activities and funding to a certain degree.¹⁹

¹⁷ Id, pages 3, 7-ff.

¹⁸ Id, page 12.

¹⁹ Kilian Bälz & Hussam Mujally, “[EGYPT: NGOs Must Bring Their Affairs in Line with the New NGO Law by 12 October 2022](#)”, 21 June 2022.

The 2019 *NGO Law*²⁰ imposes a minimum membership of 30 for registration, which is burdensome and may constitute a violation of the right to freedom of association. Additionally, any participation by a foreign NGO in the activities of a national NGO must be approved by the government. The legislation also places restrictions or conditions on the hiring of foreigners by NGOs, by requiring that authorization be sought from national authorities to hire foreigners on a full-time or part-time basis.²¹

Government authorities have threatened to dissolve any NGOs that are not registered under the 2019 law.²² The law is clearly a framework for control, as it limits civil society to “societal development” work aligned with the government’s plans, and forbids any activities that the authorities consider to be “political”, or in violation of “public order” or “morals”.²³ According to one observer:

For those CSOs that are allowed to register, the NGO Law empowers the Ministry of Social Solidarity to interfere in their work, activities, and funding. It allows authorities to enter premises without prior notice, inspect documents, challenge organisational decisions, and remove board members, among other restrictive measures. In effect, the law strips CSOs of their independence and prevents them from monitoring human rights abuses and holding officials accountable. The legislation further undermines CSOs’ ability to cooperate with local, regional, or foreign entities including international NGOs, treats their assets as public funds, and imposes excessive fines for violating its provisions. UN human rights experts have voiced grave concern that Egypt’s NGO law and regulations are in violation of basic human rights norms, and severely undermine the ability of civil society to operate independently.²⁴

Several international human rights groups, including Amnesty International, have petitioned the Egyptian Government to repeal the 2019 *NGO law* and adopt a new legislative framework that respects freedom of association in accordance with international law and standards.²⁵

Civil society organisations were initially given one year to align with the 2019 law, with that grace period expiring on 12 January 2020. On 11 April 2022, Egypt issued *Law 23/2022*, which extended the grace period until 12 October 2022.²⁶

5.2 Rwanda

Rwanda’s successive laws on national NGOs, first enacted in 2000 (*Law N° 20/2000*), then revised in 2008 (*Organic Law No. 55/2008*) and again in 2012 (*Law 04/2012*), are seen to be restrictive.²⁷

²⁰ *Law 149/2019*; see an unofficial translation at www.icnl.org/resources/library/law-no-149-on-regulating-the-exercise-of-civil-work.

²¹ Godfrey Musila, “[The Spread of Anti-NGO Measures in Africa](#)”, Freedom House, 2019, pages 10, 13.

²² “[Egypt: Authorities must repeal the outrageous NGO law](#)”, Amnesty International, 12 January 2022.

²³ “[Egypt: Authorities must Repeal the Outrageous NGO Law](#)”, Euromed Rights, 10 January 2022.

²⁴ *Ibid.*

²⁵ “[Egypt: Authorities must repeal the outrageous NGO law](#)”, Amnesty International, 12 January 2022.

²⁶ Kilian Bälz & Hussam Mujally, “[EGYPT: NGOs Must Bring Their Affairs in Line with the New NGO Law by 12 October 2022](#)”, 21 June 2022.

²⁷ *Law 04/2012*, *Official Gazette n°15*, 9 April 2012; Luke Kelly, “[Legislation on non-governmental organisations \(NGOs\) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda and England and Wales](#)”, *K4D Helpdesk*,

According to the most recent law, an NGO “may conduct commercial activities only when it is authorized to do so and the profit from such activities is meant to be used in activities related to its objectives”.²⁸ NGOs may not raise funds for political parties or causes, organise public rallies with an intention to support any political organisation or independent candidate or support candidates for public office in any other way.²⁹

Additionally, all NGOs need to register with the Rwanda Governance Board (RGB). The two-tiered registration process is reportedly difficult to negotiate. Rwandan NGOs first have to get a provisional permit, or provide a collaboration letter, from the local authority of the district where they are working. Then they must submit an action plan for the fiscal year to the RGB along with an authenticated statute (the group’s founding document, with information about its mission and structure) and the names and curricula vitae of the organisation’s “legal representative” and his or her deputy.³⁰ Once registered, the NGO gets a “temporary certificate” of registration that is valid for 12 months. It must then must apply for “legal personality” within nine months after getting the temporary certificate.³¹ The application for a temporary certificate, or for legal personality, can be refused if the organisation in question is not compliant with the law, or if there is convincing evidence that it “intends to jeopardize security, public order, health, morals or human rights”.³²

The RGB can “definitively suspend” the activities of an NGO that “jeopardizes security, public order, health, morals, and human rights”, and this can also be grounds for judicial dissolution of the group.³³

Law 05/2012 similarly requires the registration of international non-governmental organisations by the Directorate General of Immigration and Emigration, which also monitors their work. The requirements for registration include documentation on planned activities, the budget and source of funds, and information on “its geographical establishment throughout the world”. An international non-governmental organisation must also demonstrate that its overhead costs “in programs that are not in the interest of its beneficiaries” do not exceed

21 August 2019, page 10; Gloria Tengera , “[Sub-Saharan Africa Country Reports: Rwanda](#)”, *The International Journal of Not-for-Profit Law*, Icol 12, Issue 2, 2010. See generally, [Civic Freedom Monitor Report of Rwanda](#), *International Centre for Not-for-Profit Law*, last updated 22 January 2023.

²⁸ [Law 04/2012](#), Article 4.

²⁹ Id, Article 13; Morris Odhiambo, “[Background Paper on the State of Legislation for civil Society organisations in the east African community and its effect on CSO operating environment](#)”, *Westminster Foundation for Democracy*, 20 March 2017, page 28.

³⁰ [Law 04/2012](#), Articles 6 and 15-18; Luke Kelly, “[Legislation on non-governmental organisations \(NGOs\) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda and England and Wales](#)”, *K4D Helpdesk*, 21 August 2019, page 10; Dr Mehari Taddele Maru et al, “[Shrinking Civil Society Space in the Horn of Africa](#)”, *Pax Report*, August 2017, page 59.

³¹ [Law 04/2012](#), Articles 17 and 22; Morris Odhiambo, “[Background Paper on the State of Legislation for civil Society organisations in the east African community and its effect on CSO operating environment](#)”, *Westminster Foundation for Democracy*, 20 March 2017, page 27.

³² [Law 04/2012](#), Articles 20 and 24; Dr Mehari Taddele Maru et al, “[Shrinking Civil Society Space in the Horn of Africa](#)”, *Pax Report*, August 2017, page 58.

³³ [Law 04/2012](#), Articles 33 and 35.

twenty percent (20%) of its budget. The Minister can set additional registration requirements by order. Registration needs to be renewed every five years, which requires submission of similar documentation as the initial registration.³⁴

There is a separate law that governs the organization and functioning of religious-based organizations (*Law 06/2012*) which is reportedly under review due to “continued irregularities observed in operations and services of some religious based organizations”.³⁵

5.3 Uganda

In Uganda, the *Non-Governmental Organisations Act, 2016*³⁶ has been seen as a way to restrict civil society in Uganda.³⁷ The 2016 Act replaced 1989 legislation which was amended in 2006.

Under the previous *1989 Non-Governmental Organisations Registration Act*, all NGOs had to register with the National Board of Non-Governmental Organisations.³⁸ The 2006 amendment added representatives from the state security agency to the Board and gave it the discretion to refuse to register NGOs.³⁹

Under the current *Non-Governmental Organisations Act, 2016*, registration continues to be mandatory.⁴⁰ The registering authority is the National Bureau for Non-Governmental Organisations which is governed by a Board of Directors appointed by the Minister and approved by Cabinet.⁴¹

To apply for registration, an NGO must submit a certificate of incorporation and a copy of its constitution along with payment of the prescribed fee.⁴² A registered NGO must submit annual returns and audited books of account as well as a future budget and work plan and information on funds received and their sources.⁴³ A registered NGO also needs a permit to operate, which requires the submission of information on its operations, staffing and geographical area of coverage. Permits to operate must be renewed every five years.⁴⁴

³⁴ *Law 05/2012, Official Gazette n°15*, 9 April 2012; Luke Kelly, “[Legislation on non-governmental organisations \(NGOs\) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda and England and Wales](#)”, *K4D Helpdesk*, 21 August 2019, page 10-ff.

³⁵ *Law 06/2012, Official Gazette n°15*, 9 April 2012; [Civic Freedom Monitor Report of Rwanda](#), *International Centre for Not-for-Profit Law*, as updated 22 January 2023.

³⁶ [Non-Governmental Organisations Act, 2016](#), *Uganda Gazette* No. 14, 3 March 2016.

³⁷ Christopher Mbazira & Teddy Namatovu, “[Civic space and human rights advocacy in the extractive industry in Uganda: Implications of the 2016 Non-Governmental Organisations Act for oil and gas civil society organisations](#)”, *African Human Rights Journal*, Vol 18, No 1, 2018, page 76.

³⁸ *Id.*, page 10.

³⁹ *Id.*, page 85.

⁴⁰ [Non-Governmental Organisations Act, 2016](#), section 29; see also [Civic Freedom Monitor Report of Uganda](#), *International Centre for Not-for-Profit Law*, last updated 20 September 2022.

⁴¹ [Non-Governmental Organisations Act, 2016](#), section 9.

⁴² *Id.*, section 29.

⁴³ *Id.*, section 39.

⁴⁴ *Id.*, section 31.

The law requires an NGO to conduct activities only in parts of the country where it is approved to operate, and restricts it from engaging in any act which is prejudicial “to the security and laws of Uganda” or to “the interests of Uganda and the dignity of the people of Uganda”, NGOs must also be “non-partisan”, and are forbidden to engage in fundraising or campaigning to support or oppose any political party or candidate. They are required to have memorandums of understanding with all donors, sponsors, affiliates and local or foreign partners specifying the terms and conditions of ownership, employment and resources mobilised for the organisation.⁴⁵ It is a criminal offence for an NGO or an individual to engage in any activity prohibited by the Act.⁴⁶

The law gives the Bureau broad powers that include the ability to refuse to register an NGO or to issue a permit,⁴⁷ to refuse to renew a permit,⁴⁸ or to revoke a permit.⁴⁹ The Bureau also has the power to “blacklist” an NGO or to publicise the NGO’s failings.⁵⁰

State security officials are still involved, as under the previous law, but they are now part of district and sub-county monitoring committees which make recommendations on registration decisions and carry out the monitoring of NGO activities.⁵¹

There are additional requirements for the registration of foreign NGOs, which need to have letters from their embassy and the Ugandan Ministry of Foreign Affairs, as well as recommendations from the Ministry relevant to their work and from the NGO Monitoring Committee in the area where they will operate.⁵²

The various registration procedures are said to be burdensome.⁵³ The 2016 law was ostensibly enacted to give effect to a policy designed to promote NGOs and to acknowledge their

⁴⁵ Id, section 44.

⁴⁶ Id, section 40.

⁴⁷ Id, sections 30-31; Morris Odhiambo, “[Background Paper on the State of Legislation for civil Society organisations in the east African community and its effect on CSO operating environment](#)”, *Westminster Foundation for Democracy*, 20 March 2017, page 22.

⁴⁸ [Non-Governmental Organisations Act, 2016](#), section 32.

⁴⁹ Id, section 33.

⁵⁰ Id, section 7; Christopher Mbazira & Teddy Namatovu, “[Civic space and human rights advocacy in the extractive industry in Uganda: Implications of the 2016 Non-Governmental Organisations Act for oil and gas civil society organisations](#)”, *African Human Rights Journal*, Vol 18, No 1, 2018, page 86.

⁵¹ [Non-Governmental Organisations Act, 2016](#), sections 20-21; Christopher Mbazira & Teddy Namatovu, “[Civic space and human rights advocacy in the extractive industry in Uganda: Implications of the 2016 Non-Governmental Organisations Act for oil and gas civil society organisations](#)”, *African Human Rights Journal*, Vol 18, No 1, 2018, page 86.

⁵² Luke Kelly, “[Legislation on non-governmental organisations \(NGOs\) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda and England and Wales](#)”, *K4D Helpdesk*, 21 August 2019, page 14; Godfrey Musila, “[The Spread of Anti-NGO Measures in Africa](#)”, Freedom House, 2019, page 9.

⁵³ See [Civic Freedom Monitor Report of Uganda](#), *International Centre for Not-for-Profit Law*, last updated 20 September 2022; Luke Kelly, “[Legislation on non-governmental organisations \(NGOs\) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda and England and Wales](#)”, *K4D Helpdesk*, 21 August 2019, page 14.

contributions, but NGOs perceive the 2016 law as being “intended to stifle rather than promote civil society work”.⁵⁴

5.4 Malawi

Malawi’s *Non-Governmental Organizations Act, 2001* (as amended through 2014)⁵⁵ requires generally that every NGO established or operating in Malawi which is recognized as a legal person under the laws of Malawi must register with the Non-Governmental Organizations Board of Malawi. This Board consists of seven persons appointed by the relevant Minister, plus three government officials who are *ex officio* members.

However, the applicability of the Act is limited to NGOs constituted for a “public benefit purpose”, which is broadly defined as follows:⁵⁶

“public benefit purposes” means organizational purposes involving developmental and charitable purposes including but not limited to, educational, health, welfare, advocacy, cultural, civic, social, recreational, scientific, environmental, or other similar objects for the benefit of the general public, a section thereof or members of the organization but excluding involving the activities of a church or religion, trade union, employers organization or political party.

Informal groups without written constitutions are excluded from the law’s operation, and the Board has discretion to “specially exempt” other NGOs from the registration requirement.⁵⁷

Applications for registration must include the NGO’s founding document; information about the NGO’s planned activities, which must be approved by the government ministry responsible for the relevant sector; a statement certifying that the NGO will not “engage in partisan politics including electioneering and politicking”, the group’s latest financial statements and annual report; the names, addresses, occupations and nationalities of the NGO’s governing personnel; and information about funding sources.⁵⁸ As a condition of registration, an NGO must also be a member of the Council for Non-Governmental Organizations in Malawi (CONGOMA), which is established by an annual General Assembly of NGOs.⁵⁹ Registered groups must submit annual information including financial statements and activity reports.⁶⁰

The Board can order cancellation or suspension of the registration of any NGO that violates the Act, ceases to serve its intended purposes or engages in “partisan politics”. This decision is reviewable by the High Court.⁶¹ Contravention of the Act is also criminally punishable.⁶²

⁵⁴ Christopher Mbazira & Teddy Namatovu, “[Civic space and human rights advocacy in the extractive industry in Uganda: Implications of the 2016 Non-Governmental Organisations Act for oil and gas civil society organisations](#)”, *African Human Rights Journal*, Vol 18, No 1, 2018, page 85.

⁵⁵ *Non-Governmental Organizations Act, 2001 (Chapter 5:05)* (as amended through 2014).

⁵⁶ Id, section 1 (definition of “public benefit purpose” and section 2.

⁵⁷ Id, section 5.

⁵⁸ Id, section 20(3).

⁵⁹ Id, sections 20(3)(v) and 24-26.

⁶⁰ Id, section 22,

⁶¹ Id, section 23.

⁶² Id, section 33.

In 2018, the Government proposed a *Non-Governmental Organisation (Amendment) Bill* which would have added new concerns to an already stringent regime. For instance, it would have expanded the law’s coverage to “community-based organisations and “faith-based organisations” – which were not defined – and increased the powers of the regulatory authority to include broad and vague functions that could be the basis for abuse. It would also have increased fines for non-compliance with the law and introduced criminal liability and potential imprisonment for trustees and directors.⁶³

CONGOMA asserted that the proposed 2018 amendments were intended “to completely close civic policy space”, which is “undemocratic and not in the national interest”. It also objected to the fact that the proposed NGO authority would regulate NGOs, coordinate them and also represent NGO interests, making the NGO sector “a *de-facto* Government Department with no activism”.⁶⁴

Several NGOs that objected to the proposed bill successfully obtained a court order halting it on the grounds that it violated human rights standards. As a result, consultations between Government and civil society took place, and a revised *Non-Governmental Organisation (Amendment) Bill* was put forward in 2020.⁶⁵

This revised bill still does little to ameliorate the strict requirements of mandatory registration under the existing law, as well as continuing to raise additional concerns.

- The amendments to the law would continue to make registration mandatory, forbidding any organisation to operate in Malawi unless it is registered. However, since registration is restricted to organisations constituted for the “public benefit”, this might exclude some categories of NGOs and thus render them unable to operate legally.
- NGOs remained concerned that the broad discretionary powers to suspend, cancel, and revoke registration were open to abuse.
- The amendments would eliminate the General Assembly of NGOs that gave accountability and transparency to CONGOMA, while at the same time giving CONGOMA broad powers to verify NGO documents and impose “any measures it deems fit” when it believes that an NGO has failed or refused to comply,” with document verification processes.
- The bill would increase fines for violation of the Act to an excessive and disproportionate level.
- The bill fails to remedy the current intrusive disclosures and reporting requirements.⁶⁶

⁶³ “[ICNL Comments: On the Non-Governmental Organizations \(Amendment\) Bill, 2018](#)”, International Center for Not-for-Profit Law, undated; “[NGO update on NGO Act Amendment Bill 2018](#)”, CONGOMA Press Release, 11 December 2018.

⁶⁴ “[NGO update on NGO Act Amendment Bill 2018](#)”, CONGOMA Press Release, 11 December 2018.

⁶⁵ “[Malawi’s Non-Governmental Organisations Bill: Significant Challenges Remain in the 2020 Revision](#)”, International Centre for Non-Profit Law, March 2021.

⁶⁶ “[Malawi’s Non-Governmental Organisations Bill: Significant Challenges Remain in the 2020 Revision](#)”, International Centre for Non-Profit Law, March 2021.

A version of the revised bill was passed by Parliament in 2022 and has now been signed into law by the President.⁶⁷ Some Parliamentarians asserted that the changes were aimed at enhancing the accountability of how NGOs use their funds, citing examples of financial mismanagement.⁶⁸ CONGOMA supported the final version of the amendments, but some NGOs continue to believe that the amendments are “draconian”.⁶⁹

5.5 Zambia

In Zambia, *The Non-Governmental Organisations’ Act 16 of 2009* requires all NGOs to register. Registration can be refused if the government-appointed Non-Governmental Organisations’ Registration Board finds that the group’s activities or procedures are “not in the public interest”. Registration must be renewed every five years. Registered groups can be required to furnish information about their constitution and rules, their sources of funding, either officer-bearers, their annual reports and any accounts, returns or other information that the Minister prescribes.⁷⁰ The law was amended in 2020 to address terrorism financing, but without making any other changes.⁷¹ A few scholars have suggested that the law is unconstitutional.⁷²

In practice, Zambia’s treatment of NGOs in recent years has been strongly criticised. The UN Special Rapporteur on Freedoms of Peaceful Assembly and Association objected to government proceedings to ban NGOs that refused to register under the 2009 law. When a group of 10 NGOs sued the government in 2014 for enforcing this law, on the grounds that it violated constitutional rights, the government reportedly responded by asking foreign missions to defund unregistered NGOs; the case was settled out of court, but conflicts between Government and civil society continued. A 2017 shadow report by NGOs submitted as part of the UN Universal Periodic Review process reported on NGO efforts to get the 2009 law repealed, along with other laws being used against government critics under the guise of protecting “public order”.⁷³

In June 2022, the Government committed to repealing and replacing the 2009 law to respond to the long-standing criticisms and to create a more harmonious and conducive environment for the active operation of NGOs in Zambia.⁷⁴ It remains to be seen if this commitment will be honoured.

⁶⁷ The final law is the *Non-Governmental Organisation (Amendment) Act 19 of 2022*.

⁶⁸ “[Malawi: Parliament Passes NGO Bill Despite Court Injunction](#)”, *Nyasa Times*, 23 March 2022; George Singini, “[Parliament passes law to regulate NGOs](#)”, *The Nation*, 23 March 2022.

⁶⁹ “[Malawi: NGO Board, Congoma Clarify NGO Act Amendment Bill of 2022 As Bill Faces Resistance](#)”, *Nyasa Times*, 8 April 2022.

⁷⁰ The original version of *The Non-Governmental Organisations’ Act 16 of 2009* is available [here](#).

⁷¹ *The Non-Governmental Organisations (Amendment) Act 13 of 2020*, dated 30 November 2020.

⁷² See for example Muna Ndula, “[Freedom of Association and NGO Law: The Constitutionality of the 2009 Zambian NGO Law](#)”, *Southern African Journal of Policy and Development*, Volume 1 Number 2, January 2015.

⁷³ Godfrey Musila, “[The Spread of Anti-NGO Measures in Africa](#)”, Freedom House, 2019, page 20.

⁷⁴ “[Government committed to repealing the NGO act to protect beneficiaries of their services – PS](#)”, *Lusaka Times*, 23 June 2022; see also CIVICUS and Governance, Elections Advocacy, Research Services Initiative

5.6 Tanzania

The framework in Tanzania is not favourable for civil society organisations and civic freedoms. In recent years, the Government has introduced and passed several laws restricting the freedoms of association, expression, and peaceful assembly. Additionally, the laws provide the executive branch with overly broad discretionary powers. These trends have accelerated since 2016 and laws have been adopted without meaningful consultation with civil society, the public, and other relevant stakeholders.⁷⁵

According to the *The Non Governmental Organisation Act, 2002*, all NGOs must register to operate.⁷⁶ All NGOs must apply for registration with the Office of the Registrar of NGOs, which is part of the Ministry of Health, Community Development, Gender, Elderly, and Children. The government-appointed Non Governmental Organizations Coordination Board approves and coordinates the registration of NGOs and monitors NGOs' adherence to their governing documents. The Board may refuse to register an organisation as an NGO if the activities are not in the "public interest" or if the National Council for Non Governmental Organizations (which is composed of 30 members appointed by NGOs) has recommended that the NGO not be registered.⁷⁷ Registered NGOs are entitled to engage in "legally acceptable fund raising activities".⁷⁸ The Act requires that NGOs must be autonomous, non-partisan and non-profit making, and must be organised for the purpose of "enhancing or promoting economic, environmental, social or cultural development or protecting environment, lobbying or advocating on issues of public interest".⁷⁹ This means that "NGOs are not permitted to become involved in political platforms or conduct activities that are aimed toward influencing or mobilizing citizens to engage in a certain political party."⁸⁰ NGOs must renew their certificate of registration every 10 years.⁸¹

NGOs must publish two annual reports: (1) an annual activity report (made available to the public, the Council, the Board, and other stakeholders) and (2) an annual audited financial report (submitted to the Council and Board and made available to the public).⁸² NGOs also

Zambia, "[Zambia Joint Submission to the UN Universal Periodic Review 42nd Session of the UPR Working Group](#)", submitted 14 July 2022, page 4.

⁷⁵ [Civic Freedom Monitor Report of Tanzania](#), *International Centre for Not-for-Profit Law*, last updated 19 March 2021.

⁷⁶ [The Non Governmental Organisation Act, 2002](#), section 11(1). See also [Civic Freedom Monitor Report of Tanzania](#), *International Centre for Not-for-Profit Law*, last updated 19 March 2021.

⁷⁷ [The Non Governmental Organisation Act 2002](#), section 14.

⁷⁸ *Id.*, section 32.

⁷⁹ See the definition of "non governmental organisation" in section 2 of the Act.

⁸⁰ [Civic Freedom Monitor Report of Tanzania](#), *International Centre for Not-for-Profit Law*, last updated 19 March 2021.

⁸¹ [The Non Governmental Organisation Act 2002](#), section 17(3) and (4); see also [Civic Freedom Monitor Report of Tanzania](#), *International Centre for Not-for-Profit Law*, last updated 19 March 2021.

⁸² [The Non Governmental Organisation Act 2002](#), section 29(1) and (2).

have to comply with extensive financial transparency and reporting obligations under the *NGO Act (Amendment) Regulations of 2018*.⁸³

All NGOs must disclose publicly the source, expenditure, purpose, and activities related to funds or resources obtained, within 14 days from the date of completing fundraising activities.⁸⁴ If the funds that the NGO has received exceed twenty million shillings (approx. N\$146 500 or US\$8 500),⁸⁵ it must further submit all contracts or agreements entered with donors and declare any resource received in cash or kind before its expenditure.⁸⁶ Additionally, it has to publish in a widely-circulating newspaper or other media channels twice a year information about all funds and expenditures.⁸⁷

Without a doubt, these regulations pose a heavy burden for existing NGOs as well as discouraging the formation of new NGOs. In particular, international NGOs seemed to be targeted, as they might often receive donations of more than twenty million shillings and also have additional duties according to the *2002 Act*, such as “(1) fostering and promoting the capacities and abilities of other NGOs; (2) participating in the activities of the Council; and (3) refraining from acts likely to cause competition or misunderstanding among NGOs”.⁸⁸

On top of the mentioned regulations, the Government also possesses significant powers to monitor NGO activities. The Director for Non-Governmental Organizations Coordination appointed by the President may conduct monitoring and evaluation of NGO activities every quarter, investigate any matter that the Registrar views as being required, and demand cooperation from law enforcement and public entities to help the Registrar implement the law.⁸⁹ Additional guidelines on monitoring and evaluation of NGO operations may be issued by the relevant Minister.⁹⁰

The failure to register an operating NGO may be sanctioned by a fine of up to 500 000 shillings (just over US\$200) and/or imprisonment for up to one year. The individual responsible may be

⁸³ [Non Governmental Organizations Act Regulations, 2004](#) as amended by [The Non Governmental Organizations Act \(Amendments\) Regulations, 2018](#) and by [The Non-Governmental Organisations \(Amendments\) Regulations, 2019](#), regulation 14. Note that the online source for the 2004 regulations presents the pages out of order.)

⁸⁴ [The Non Governmental Organizations Act \(Amendments\) Regulations, 2018](#) as amended by [The Non-Governmental Organisations \(Amendments\) Regulations, 2019](#), regulation 12.

⁸⁵ Conversion rates updated on 10 January 2023.

⁸⁶ [The Non Governmental Organizations Act \(Amendments\) Regulations, 2018](#), as amended by [The Non-Governmental Organisations \(Amendments\) Regulations, 2019](#), regulation 13; Luke Kelly, “[Legislation on non-governmental organisations \(NGOs\) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda and England and Wales](#)”, *K4D Helpdesk*, 21 August 2019, page 13.

⁸⁷ [The Non Governmental Organizations Act \(Amendments\) Regulations, 2018](#), regulation 13.

⁸⁸ [The Non Governmental Organisation Act 2002](#), section 31(c); [Civic Freedom Monitor Report of Tanzania](#), *International Centre for Not-for-Profit Law*, last updated 19 March 2021.

⁸⁹ [The Non Governmental Organisation Act Rights and Duties of Assistant Registrars Regulations Act of 2019](#), section 4; [Civic Freedom Monitor Report of Tanzania](#), *International Centre for Not-for-Profit Law*, last updated 19 March 2021.

⁹⁰ [The Non Governmental Organisation Act 2002](#), section 4(4).

disqualified from holding office in any NGO in Tanzania for a maximum period of 5 years.⁹¹ The Registrar also can suspend an NGO that violates the provisions of the NGO Act, with the final decision on this step lying with the Board.⁹²

The precarious situation for civic organisations in Tanzania serves as an example of the possible consequences of excessive government involvement in civic organisations.

5.7 Zimbabwe

In Zimbabwe, the *Private Voluntary Organisation Act (Chapter 17:05)* is in the process of being amended by the *Private Voluntary Organisations (PVO) Amendment Bill, 2021*, which has now been passed by both Houses of Parliament.⁹³

The original *Private Voluntary Organisation (PVO) Act* provided for the mandatory registration of private voluntary organisations and also “for the control of the collection of contributions for the objects of such organisations and certain institutions, and matters incidental thereto”.⁹⁴ The definition of “private voluntary organisation” limits this category to groups that perform certain functions, such as charity work, the funding of legal aid and animal welfare – or, very broadly, “such other objects as may be prescribed” – with a list of exemptions, such as religious bodies that engage only in religious work, political organizations engage only in political activities and various types of health-related groups.⁹⁵

The amended law authorises the Minister, through regulations, to remove exemptions from any group “at high risk of or vulnerable to misuse by terrorist organizations whether as a way for such terrorist organisations to pose as legitimate entities; or to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes”. The amendments also completely remove the previous exemption for trusts.⁹⁶ The amended law provides civil penalties for civil society organisations that transact outside of official banking platforms.⁹⁷

⁹¹ [The Non Governmental Organisation Act 2002](#), section 35; [Civic Freedom Monitor Report of Tanzania, International Centre for Not-for-Profit Law](#), last updated 19 March 2021;

⁹² [The Non Governmental Organisation Act 2002](#), sections 7(1)(e) and 21 - 22; [Civic Freedom Monitor Report of Tanzania, International Centre for Not-for-Profit Law](#), last updated 19 March 2021.

⁹³ “[Zimbabwe approves 'draconian' law targeting civil society](#)”, *Africa News*, 2 Feb 2023; Thandekile Moyo, “[Zimbabwean government passes law designed to throttle independent civil society](#)”, *Daily Maverick*, 23 January 2023.

⁹⁴ [Private Voluntary Organisation \(PVO\) Act \(Chapter 17:05\)](#), long title and section 6. For a detailed analysis of the original law and the first version of the amendments gazetted in 2021, see Zimbabwe Lawyers for Human Rights, “[The Operating Space of Civil Society Organisations in Zimbabwe: A Critical Analysis of the Proposed Regulation of Civil Society](#)”, 2021.

⁹⁵ [Private Voluntary Organisation \(PVO\) Act \(Chapter 17:05\)](#), section 1 (definition of “private voluntary organisation”).

⁹⁶ [Private Voluntary Organizations Amendment Bill](#), version with Committee Stage Amendments. The authors were unable to locate the final version of the Act online.

⁹⁷ Sikhululekile Mashingaidze, “[NGOs in Zimbabwe under threat — and not for the first time](#)”, *Mail & Guardian*, 22 July 2022.

According to the government, the bill was intended is supposed to enact recommendations made by the Financial Action Task Force (FATF), streamline administrative procedures and allow for the efficient regulation and administration of PVOs, and prevent PVOs from undertaking political lobbying.⁹⁸ The Minister of Justice motivated the changes by citing concerns that charities were “being used as a cover for theft, embezzlement, tax evasion, money laundering or partisan political activities”, as well as alleging that groups were “directing money to favoured political parties”.⁹⁹ In fact, a clause in one version of the bill made it a criminal offence for a PVO to support or oppose any political party or candidate in a presidential, parliamentary or local government election – although it is not clear whether this provision was included in the final law or not.¹⁰⁰ It seems clear that the law’s real intention is to block civil society support for political parties and candidates.

Furthermore, critics assert that the law’s breadth could effectively criminalise the activities of any organisation that the government dislikes. For example, the law would allow the Minister to suspend a group’s executive committee and appoint “trustees” to run its affairs pending the election of a new executive committee, on information that the group has ceased to operate in furtherance of the objects specified in its constitution, where maladministration of the organisation is adversely affecting its activities, where the organisation is involved in any illegal activities - or where it appears to the Minister that “it is necessary or desirable to do so in the public interest”¹⁰¹. (These actions are reviewed by the High Court *after* they have taken place.¹⁰²) The amendments also provide for potential jail terms for any individuals involved in violations of the law’s provisions.¹⁰³ It is alleged that the legal changes could result in drastic cuts in foreign aid which comes to the country through NGOs, as well as leading to significant losses of employment in the NGO sector.¹⁰⁴

The law has been passed, despite widespread civil society opposition. For example, on 22 November 2022, over 40 civic organisations published an open letter wherein they expressed their concerns about the proposed amendments.¹⁰⁵ Civil society groups have also complained that their proposals for adapting the amendments, which they thought had been agreed to by the Minister of Justice, were ignored at the end of the day.¹⁰⁶

⁹⁸ [Memorandum to the Private Voluntary Organisations Amendment Bill](#), 2021, page (i)-ff.

⁹⁹ Justice Minister Ziyambi Ziyambi, as quoted in “[Zimbabwe approves 'draconian' law targeting civil society](#)”, *Africa News*, 2 February 2023.

¹⁰⁰ [Private Voluntary Organizations Amendment Bill](#), amendment of section 10; at committee stage it was recommended that this clause should be deleted, but see Thandekile Moyo, “[Zimbabwean government passes law designed to throttle independent civil society](#)”, *Daily Maverick*, 23 January 2023.

¹⁰¹ [Private Voluntary Organizations Amendment Bill](#), new section 21.

¹⁰² Byron Adonis Mutingwende, “[CSOs react to amendments to the Private Voluntary Organisations \(PVO\) Bill](#)”, 2022.

¹⁰³ [Private Voluntary Organizations Amendment Bill](#), amendments to section 6; “[New Zimbabwe law threatens to criminalise and ban NGOs](#)”, *The Zimbabwean*, 10 March 2022; “[Senate passes notorious PVO Amendment Bill](#)”, *The Zimbabwe Mail*, 2 February 2023,

¹⁰⁴ “[Zimbabwe approves 'draconian' law targeting civil society](#)”, *Africa News*, 2 February 2023.

¹⁰⁵ “[Zimbabwe: President Mnangagwa-led Government must stop targeting and stigmatising civil society organisations](#)”, International Service for Human Rights, 22 November 2022.

¹⁰⁶ Byron Adonis Mutingwende, “[CSOs react to amendments to the Private Voluntary Organisations \(PVO\) Bill](#)”, 2022.

A coalition of civil society groups has published the following overview of some of the most concerning provisions of the amended law:

Among the many revisions, the new amendments completely remove the PVO Board and create an executive and powerful office of a Registrar of PVOs vested with all decision-making powers to register or deny registration to applicants for PVO status. A Private Voluntary Organisations Forum entirely controlled by the Registrar of PVOs is also created, with an unclear purpose but with the potential to be used to gather information from PVOs, monitor them, and reach resolutions that will impact the work of PVOs.

New principles governing PVOs are introduced, including requiring PVOs to ascertain the identity of donors and sources of donations; to refuse and report any donations from “illegitimate” or “immoral” sources; prohibiting fundraising for charitable purposes by anyone not registered as a PVO or authorized under the Act to do so; requiring PVOs not to “conduct themselves in a politically partisan manner”; prohibiting the use of “resources to benefit members of a particular affiliation or making any test of the political allegiance of its beneficiaries”; requiring PVOs to be sensitive to the “cultural values and norms” of the communities they work in, and requiring PVOs to prioritize the employment of Zimbabwean citizens or permanent residents.

New and stricter registration requirements are introduced, requiring trusts, bodies, associations of persons corporate or unincorporated, and any institutions that are not exempt under the PVO Act, that receive financial donations or collect contributions from the public to conduct prescribed charitable activities to be registered as PVOs. The amendments introduce specific provisions for “sanctionable trusts”, whom the Registrar suspects to be operating unlawfully, to be dispatched with a written notice by the Registrar and requiring that the trust commence registration within 30 days, failing which the trustees are subject to criminal liability. There are no transitional provisions provided, meaning that organizations currently operating lawfully as trusts and associations, who qualify to be regarded as PVOs because of the source of their charitable activities and funding sources, will be rendered unlawful as soon as the Bill is passed into law, pending the Registrar’s determination of their applications. There are also no time limits within which the Registrar must determine registration applications. This means that organizations could be left in limbo for months if not years, or forever.

There is an imposition of harsh criminal and civil penalties for vaguely defined offences, including on executive committee members and personnel of PVOs. PVOs are guilty of “civil default” on vague grounds, violating administrative justice rights. The amendments have maintained provisions allowing for the Minister to unilaterally designate organisations as being at “high risk” of money laundering and counter-terrorism abuses and impose specific measures on them, with appeals to the High Court only allowed on procedural grounds and no rights for the High Court to overturn the decision, only to refer it back to the Minister.

The amendments have also maintained the Minister’s powers to suspend executive committees of organisations unilaterally and arbitrarily, and impose provisional trustees with extensive powers, with the High Court only reviewing the suspension and appointments after they have been imposed. While the amendments have introduced the right to appeal a decision of the Registrar – in relation to applications for registration, deregistration and amendments of certificates – appeals are only to the Minister, not to a court of law, and the Minister has no powers to overturn decisions, only to refer decisions back to the same Registrar for reconsideration.

The amendments also provide for purported ‘extraterritorial agreements’ with unspecified foreign governments to monitor PVOs in other countries.¹⁰⁷

A similar wide-ranging Bill was gazetted in 2004 under the administration of former president Robert Mugabe but the NGO Bill of 2004 ultimately failed to get presidential assent.¹⁰⁸

In December 2021, four United Nations Special Rapporteurs sent a joint communication to President Mnangagwa emphasising that the Bill granted unchecked discretion to the government to target, deregister, and ban organisations and not compliant with Zimbabwe’s treaty obligations as articulated in the International Covenant on Civil and Political Rights. While the controversial bill continues to be considered, the government has sustained its attacks on civil society organisations. Staffers of Transparency International, National Association of Youth Organisations, and the Institute for Women Development have been arrested at different times during their meetings. The government has also arrested officers of the Zimbabwe Elections Support Network during a voters’ education event in Mbare.¹⁰⁹

Although the most recent changes are ostensibly aimed at terrorism, one critic argues that “what the government regards as ‘terrorism’ — or who they regard as a ‘terrorist’ — is anyone they believe to be supporting the opposition or opposing government”, in the form of the ruling party. It is pointed out that this actually constitutes “the criminalisation of dissent”, and creates a situation where private voluntary organisations could be stopped from criticising the government for human rights abuses violations if this is seen as opposing a political party.¹¹⁰ One writer who works for a national human rights group says that the amended law will end up “further shrinking civic space, suffocating development aid, smothering humanitarian support, and outlawing targeted NGOs”.¹¹¹

Some suggest that the clampdown on civil society has been motivated to impact the forthcoming 2023 elections.¹¹² In fact, the Parliamentary portfolio committee dealing with the amendment bill reportedly proposed that it should be fast-tracked to “prevent outside interference in elections”.¹¹³

At the time of writing (early February 2023), although the amendments had been approved by both houses of Parliament, it was not clear if the final law had been signed by the President and

¹⁰⁷ Ibid.

¹⁰⁸ Sikhululekile Mashingaidze, “[NGOs in Zimbabwe under threat — and not for the first time](#)”, *Mail&Guardian*, 22 July 2022.

¹⁰⁹ “[Zimbabwe: President Mnangagwa-led Government must stop targeting and stigmatising civil society organisations](#)”, International Service for Human Rights, 22 November 2022. See also Sikhululekile Mashingaidze, “[NGOs in Zimbabwe under threat – and not for the first time](#)”, *Good Governance Africa*, 5 February 2023.

¹¹⁰ Thandekile Moyo, “[Zimbabwean government passes law designed to throttle independent civil society](#)”, *Daily Maverick*, 23 January 2023.

¹¹¹ Phillip Nyasha Fungurai, “[PVOs Bill: Death knell to livelihoods](#)”, *News Day*, 8 February 2023.

¹¹² “[Zimbabwe Approves Law Targeting Civil Society](#)”, *Agence France Presse*, 2 February 2023.

¹¹³ Sikhululekile Mashingaidze, “[NGOs in Zimbabwe under threat – and not for the first time](#)”, *Good Governance Africa*, 5 February 2023.

published in the country's *Government Gazette*. Thus, the provisions discussed here should be confirmed against the final published version of the law.¹¹⁴

5.8 Botswana

In Botswana, a new *Societies Act* containing registration requirements for societies was enacted in 2022.¹¹⁵ This law defines a “society” as “any association of 150 or more persons for a religious society or any association of 20 or more persons for any other society, formed primarily for raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes”.¹¹⁶ Accordingly, smaller societies are exempt from the obligation to register – which protects grassroots organisations against undue administrative burdens.

Under the current law, a society that falls under the law's definition must apply for registration within 28 days of its formation. The application must include “such particulars as the Registrar may consider necessary”.¹¹⁷ Societies that were registered under the previous law are required to re-register.¹¹⁸

The Registrar may refuse to register a society if he or she is of the opinion that:

- the society's objects are unlawful and prejudicial to the peace, welfare or good order;
- the application does not comply with the law, or the society has failed to provide requested information to the Registrar within 90 days of the request for it;
- the society's office-bearers cannot keep proper records of meetings and members and fail to perform the duties imposed by the Societies Act;
- the society has not adopted its own constitution, or the constitution is unlawful or repugnant to written laws;
- the society does not exist;
- the name of the society is identical to another society or too close to another society's name, or unlawful
- there is a reasonable suspicion that the society has committed a financial offence; that the society or its office bearer or an affiliated society is subject to sanctions, embargos or similar measures by the UN Security Council; or that the society is involved in financing or supporting terrorist activities illicit dealing in arms or ammunition;
- an office-bearer of the society has been found guilty of a crime in respect of the sector in which the society wishes to operate, either inside or outside Botswana; or
- an officer-bearer holds another office in another society operating in the same space.¹¹⁹

¹¹⁴ The Bill was passed by the Senate on 1 February 2023. Section 131(6) of the Zimbabwe requires that the President must assent to the Bill within 21 days and have it published in the *Government Gazette* or refer it to the Constitutional Court for advice on its constitutionality. Phillip Nyasha Fungurai, “[PVOs Bill: Death knell to livelihoods](#)”, *News Day*, 8 February 2023.

¹¹⁵ *Societies Act 18:01 (Act 6 of 2022)*. (The previous *Societies Act* also required registration.)

¹¹⁶ *Id.*, section 2.

¹¹⁷ *Id.*, section 5.

¹¹⁸ *Id.*, section 32.

¹¹⁹ *Id.*, section 6.

If the application is successful, the Registrar will issue a certificate of registration that is valid for a period stipulated on the certificate. The society may not operate unless it has been issued with a certificate of registration; it will otherwise be considered an illegal society. It is a criminal offence for any person to be an office-bearer or a member of an illegal society, to assist with the management of an illegal society; to solicit or collect money on behalf of an illegal society; or even to allow a meeting of an illegal society or to be held in a place that he or she owns or controls. The penalty can be a fine of up to P50 000 (about US\$3900) or imprisonment for up to six years, or both.¹²⁰

If an application is rejected, there is a right of appeal to the relevant minister and then to the High Court.¹²¹

The Registrar can require any society to provide its constitution, a list of its office-bearers and members, information about the number and venues of meetings held over the previous six months along with various accounts, returns and other unspecified particulars. Failure to hand over any requested information is a criminal offence. The Registrar can publish any of this information if he or she considers this to be in the interests of the society's members.¹²²

The previous version of the *Societies Act* - which applied to societies of 20 persons or more - allowed local societies to apply for exemption from the requirement of registration under this Act, without providing any criteria for exemption.¹²³

The Botswana Council of Non-Governmental Organisations (BOCONGO), established in 1995, serves as a national coordinating body for NGOs in Botswana. BOCONGO works with NGOs and other stakeholders to strengthen the NGO sector by coordinating the sector's contributions to development in Botswana and beyond.¹²⁴ In late 2022, the chairperson of BOCONGO made a statement emphasising the need to jealously guard civic space and ensure that civil society organisations and other non-state actors deliver on their mandates without interference, intimidation, fear, or favour.¹²⁵

A major challenge for NGOs in Botswana appears to be their lack of financial independence and their resultant dependency on government and donor funding. The decline in donor funding and over-reliance on Government means that civil society organizations are not adequately insulated from government influence. This greatly compromises their independent ability “to

¹²⁰ Id, sections 5(5)-(7) and 14.

¹²¹ Id, section 6(2)-(3).

¹²² Id, section 13.

¹²³ This is evident from a comparison of the texts of the old and new laws; at the time of writing (Feb 2023) the text of the pre-2022 version of the *Societies Act* was available [here](#) and [here](#), as compared to the [Societies Act 18:01 \(Act 6 of 2022\)](#). See also Neo Kolantsho, “[Churches ready to team up against government's oppression](#)”, *Botswana Guardian Sun*, 30 November 2022.

¹²⁴ See [BOCONGO Website](#); Zein Kebonang & Kabelo Kenneth Lebotse, “Reflections on the Legislative Environment for Nongovernmental Organizations in Botswana”, *The International Journal of Not-for-Profit Law*, Volume 12.

¹²⁵ Edward Bule, “[BOCONGO ashamed of Botswana](#)”, *Botswana Guardian Sun*, 4 November 2022

articulate the needs of the public and/or of specific groups, to hold the government accountable, and to provide goods and services where those are inaccessible because of government's lack of capacity or resources.”¹²⁶

A series of court cases involving the civil society group Lesbians, Gay and Bisexuals of Botswana (LEGABIBO) illustrates some of the potential concerns about registration schemes. In 2012, LEGABIBO was refused registration, in part on the grounds that the Botswana Constitution does not recognize homosexuality, and also on the basis of a statutory provision which authorises a refusal to register any society that includes in its objects anything that “is, or is likely to be used for any unlawful purpose or any purpose prejudicial to, or incompatible with peace, welfare or good order in Botswana”.¹²⁷ In 2014, the Botswana High Court held that there was no basis to deny registration to this group. It disagreed with the proposition that the Constitution does not recognise homosexuality, noting that the Constitution does not identify any persons on the basis of their sexual orientation. It also rejected the argument that group members were likely to use the group to engage in illegal homosexual acts, pointing out that one of the organisation's objectives was to lobby for the decriminalization of same-sex relationships. In light of this analysis, the Court held found that denying people the right to register a group for the purposes of lawful advocacy constituted “a clear violation” of their constitutional rights to freedom of expression, assembly, and association.¹²⁸ This holding was confirmed by the Botswana Court of Appeal (the highest court in the country).¹²⁹ Although the ultimate outcome of the case vindicated human rights, this surely serves as a cautionary tale.

5.9 South Africa

In 1997, South Africa introduced a *Nonprofit Organisations Act*. The stated aims of this law are “to encourage and support nonprofit organisations in their contribution to meeting the diverse needs of the population” by -

- creating an environment in which they can flourish;
- establishing an administrative and regulatory framework within which nonprofit organisations can conduct their affairs;
- encouraging nonprofit organisations to maintain adequate standards of governance, transparency, and accountability;
- creating an environment within which the public may have access to information concerning registered nonprofit organisations; and

¹²⁶ Zein Kebonang & Kabelo Kenneth Lebotse, “Reflections on the Legislative Environment for Nongovernmental Organizations in Botswana”, *The International Journal of Not-for-Profit Law*, Volume 12, Issue 4, November 2010.

¹²⁷ *Societies Act (CAP 18:01)* (as it stood prior to 2022), section 7(2)(a).

¹²⁸ *Thuto Rammoge and 19 others v The Attorney General of Botswana*, MAHGB-OOO175-13, High Court of Botswana, 14 November 2014. See also LEGABIBO, “[Challenges to refusal to register organisation](#)”, 9 April 2013.

¹²⁹ *The Attorney General of Botswana v Rammoge and 19 others*, Court of Appeal Civil Appeal No. CACGB-128-14, 16 March 2016; Library of Congress, “[Botswana: Highest Court Rules Government Must Register Gay Rights Advocacy Group](#)”, 2016.

- promoting a spirit of cooperation and shared responsibility on the part of Government, donors, and other interested persons in their dealings with nonprofit organisations.¹³⁰

There are four strands to the legislation: (1) *Establishment*: The law facilitates the establishment of non-profit organisations that take the form of voluntary associations, non-profit trusts, or non-profit companies. (2) *Voluntary registration*, which allows any non-profit organisation which is a legal entity to apply for the status of a “registered non-profit organisation.” (3) *Partial tax exemption*, which enables a non-profit organisation to apply for certain tax exemptions by acquiring the status of a “Public Benefit Organisation” which does not use its resources to directly or indirectly support, advance, or oppose any political party. (4) *Donor deductibility status*, which allows eligible public benefit organisations to apply for the right to receive tax-deductible donations.¹³¹

Registration under the *Nonprofit Organisations Act* was originally voluntary,¹³² although it was often required to access funding from government departments and some corporate donors. To register, an organisation must meet all of the following criteria:

1. It must be a trust, company, or other association of persons established for a “public purpose” (a term that is not further defined).¹³³
2. It must not distribute income or property to members or officers except for “reasonable compensation for services rendered”.¹³⁴
3. It must not be “an organ of state”.¹³⁵
4. It must include certain internal governance provisions in its founding document.¹³⁶

More specifically, the non-profit organisation’s founding document must -

- state the organisation’s main and ancillary objectives
- state that the organisation’s income and property are not distributable to its members or office-bearers, except as reasonable compensation for services rendered
- make the provision for the organisation to be a body corporate and have an identity and existence distinct from its members or office-bearers (ie an independent legal personality)
- make provision for the organisation’s continued existence notwithstanding changes in the composition of its membership or office-bearers

¹³⁰ *Nonprofit Organisations Act 71 of 1997*, section 2.

¹³¹ “[Nonprofit Law in South Africa](#)”, Council on Foundations, last updated March 2022

¹³² But see below the discussion of the recent amendment to the *Nonprofit Organisations Act*, which is not yet in force.

¹³³ *Nonprofit Organisations Act 71 of 1997*, section 1(1)(x)(a).

¹³⁴ *Id.*, section 1(1)(x)(b).

¹³⁵ *Id.*, section 12(1).

¹³⁶ *Id.*, section 12(2); see also “[Nonprofit Law in South Africa](#)”, Council on Foundations, last updated March 2022.

- ensure that the members or office-bearers have no rights in the property or other assets of the organisation solely by virtue of their status as members or office-bearers
- specify the powers of the organisation
- specify the organisational structures and mechanisms for the organisation’s governance
- set out the rules for convening and conducting meetings, including requirements for quorums and minutes;
- determine how decisions are to be made
- provide that the organisation’s financial transactions must be conducted through a banking account
- determine dates for the organisation’s financial year
- set out a procedure for amending the constitution
- set out a procedure by which the organisation may be wound up or dissolved and provide that, when the organisation is being wound up or dissolved, any assets remaining after all its liabilities have been met, must be transferred to another nonprofit organisation having similar objectives.¹³⁷

Most of these requirements were already in place as part of the common-law or statutory requirements for registering an entity as a non-profit trust, a non-profit company, or a voluntary association.

An organisation seeking registered non-profit organisation status under the *Nonprofit Organisations Act* must apply to the Directorate for Non-Profit Organisations, which falls under the Department of Social Development. If the organisation qualifies, the Directorate issues a certificate and a registration number. To retain this registered status, the organisation must submit narrative and financial reports to the Directorate annually.¹³⁸

The following potential benefits of registration have been identified:

- public recognition
- promotion of good standing
- impetus for transparency and accountability in activities
- promotion of access to government and corporate funding
- improvement of the credibility of the sector by making non-profit groups accountable to a public office
- organisation of civil society into a formal system
- assistance in sourcing benefits such as tax incentives and funding opportunities (upon additional registration for public benefit organisation status).¹³⁹

¹³⁷ *Nonprofit Organisations Act 71 of 1997*, section 12(2).

¹³⁸ See “[Nonprofit Law in South Africa](#)”, Council on Foundations, last updated March 2022.

¹³⁹ Craig Tonkin, “[Non-profit organisation-related law and benefits in South Africa – article 1 of 2](#)”, and “[Non-profit organisation-related law and benefits in South Africa – article 2 of 2](#)”, Fincor (a financial services company), 2021; “[All You Need to Know about the Registration of a Non-Profit Organisation \(NPO\)](#)”, Department of Social Development (National), Government of South Africa (republished by the Western Cape

Although registration under the *Nonprofit Organisations Act* has been ostensibly voluntary up to now, registration is typically a requirement to access funding from the State or other donors.¹⁴⁰ One analyst describes the practical impact of the law as follows:

Registration in terms of the NPO Act has become increasingly important for voluntary associations which are established in terms of common law. Without a registration certificate, a voluntary association in South Africa would find it virtually impossible to open a bank account. Other nonprofit legal entities do not require registration in terms of the NPO Act to open a bank account as they are able to offer other forms of incorporation certificates. Registration in terms of the NPO Act is therefore essential for voluntary associations. The process to register in terms of the NPO Act is usually met with delays.

Once registered, the director for NPOs can de-register NPOs that are registered in terms of the Act if such NPOs have not complied with:

- a. a material provision of its founding document;
- b. a condition or term of any benefit or allowance conferred on it by the Minister of Social Development in terms of the Act; or
- c. its reporting obligations in terms of the Act.

The NPO Act requires that the director for NPOs must send a compliance notice in the prescribed form to a registered NPO if such organisation has not complied with its obligations in terms of the Act.... It seems that some organisations claimed not to have received the non-compliance notice and only became aware of the de-registered or non-compliant status after having read reports in the media...

I suspect that many de-registered organisations have either been non-compliant or dormant. Some may have failed to update their changed contact details with the NPO Directorate. This may have resulted in non-compliant notices being sent to wrong addresses. The NPO Act compels the director for NPOs to de-register an organisation that has not complied with the non-compliance notice. The director may extend the period for compliance on good cause shown by the organisation. No further discretion is given to the director for NPOs. Some organisations have however claimed that their reports were submitted in a timely manner and were able to offer proof of that.¹⁴¹

In 2022, two different bills were introduced in South Africa which would amend the *Nonprofit Organisations Act*.

Initially, the South African Government announced plans to amend the law to make registration mandatory for foreign organisations operating in South Africa. This set of proposed amendments would have additionally required that a non-profit organisation (whether foreign or domestic) must disclose whether a member or office bearer has been previously found guilty of an offence relating to the embezzlement of money from any non-profit organisation.¹⁴²

This proposed set of amendments attracted much criticism; in June 2022, the Non-Profit Organisation Working Group (which represents 180 non-profit organisations) asked South

Government), 2014; André Nortjé – SchoemanLaw Inc. “[Non-Profit Companies: Registering as a Public Benefit Organisation and the benefits that accompany such status](#)”, 2017.

¹⁴⁰ Ricardo G. Wyngaard, “Changing Legal Environments for Civil Society Organisations: The South African NPO Crisis: Time to Join Hands”, *The International Journal of Not-for-Profit Law*, Volume 15, Issue 1, March 2013.

¹⁴¹ Ibid.

¹⁴² The *Nonprofit Organisations Amendment Bill, 2018* was published in [South African Government Gazette 45244](#), dated 1 October 2021, and in [South African Government Gazette 46349](#), dated 10 May 2022.

Africa's Department of Social Development to withdraw the draft bill and re-work it in consultation with the non-profit sector. One purpose of the bill was to combat money laundering and the financing of terrorism. The NGO community criticised the bill, noting that it was poorly drafted and open to overly-broad interpretation. While it was agreed that some nonprofits could benefit from assistance with the implementation of good governance, the sector was not convinced that the bill would achieve this goal. Also, while agreeing with the need to counter corruption and terrorism, representatives of civil society feared that the bill would constitute draconian over-regulation.¹⁴³

After this discussion took place, an even more expansive set of amendments was proposed in the *General Laws Amendment Bill*.¹⁴⁴ After being investigated by the Financial Action Task Force (FATF), which is a global money-laundering and terrorist financing watchdog, South Africa was threatened with being "grey-listed" in the FATF ratings. Next to the "black list" - which is a list of countries that FATF considers to be non-cooperative in the global effort to combat money laundering and terrorism financing - the FATF also publishes a "grey list" of countries that have deficiencies in their money laundering and terrorism financing controls but have committed to addressing their shortcomings. "Grey-listed" countries remain under increased monitoring by the FATF.¹⁴⁵

The second proposed bill proposed to make the registration of *all* non-profit organisations mandatory and require them to submit information about their office-bearers, control structure, governance, management, administration, and operations. It also proposed limits on the persons who would be allowed to serve as office-bearers of registered organisations. It has been asserted that these amendments would have "far-reaching – and patently unconstitutional – repercussions", as well as being unlikely to meaningfully counter the harms they aimed to address.¹⁴⁶ On 13 October 2022, the period for public comments on the *General Laws Amendment Bill* was extended after civil society raised red flags about the bill.¹⁴⁷

Despite being highly controversial and widely criticized, the *General Laws Amendment Bill* was passed by Parliament on December 2022 and has become the *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022*.¹⁴⁸ However, the final version of the law *requires* registration only for nonprofit organisation that make donations to individuals or organisations, or provide humanitarian, charitable, religious,

¹⁴³ "[South African NPOs call for draft Bill to be recalled](#)", Alt.advisory(a public interest advisory and research firm), 10 June 2022; Tamsin Metelerkamp, "[Petition calls for total recall of NPO Amendment Bill amid fears for sector](#)", *Daily Maverick*, 2 June 2022. The text of the NGO Working Group petition is available [here](#).

¹⁴⁴ *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill* [B 18-2022], available for download [here](#). An explanatory summary of the bill was published in *South African Government Gazette* 46744, dated 18 August 2022, available [here](#).

¹⁴⁵ See the FATF publication "[Jurisdictions under Increased Monitoring - June 2022](#)".

¹⁴⁶ William Byrd, "[SA's harebrained scheme to register NPOs will not solve terrorist financing concerns](#)", *Daily Maverick*, 9 October 2022; Nicole Copley, "[Mandatory registration requirement in money-laundering and terrorist financing bill will badly hurt SA non-profits](#)", *Daily Maverick*, 8 October 2022.

¹⁴⁷ Tamsin Metelerkamp, "[Period for public comments on greylisting bill extended after NPO sector raises red flags](#)", 13 October 2022.

¹⁴⁸ [General Laws \(Anti-Money Laundering and Combating Terrorism Financing\) Amendment Act 22 of 2022](#).

educational or cultural services, *outside South Africa's borders*.¹⁴⁹ It also incorporates some protective measures by limiting the grounds on which registration can be denied or cancelled.¹⁵⁰ But the restrictions on the persons qualified to serve as office-bearers of registered non-profit organisations have been imposed.¹⁵¹

6. Money laundering and terrorist financing concerns

The need to combat money-laundering and terrorist financing is often cited as a motivation for laws on NGO registration or other NGO regulations – but these concerns can be intentionally or inadvertently exaggerated to justify an unnecessary level of government control.

The Financial Action Task Force (FATF) is an intergovernmental watchdog that sets international standards to assist national authorities to combat the illicit funding of drug trafficking, arms trade, cybercrime and other serious crimes.¹⁵² The FATF has set out a comprehensive framework of forty recommendations that countries should implement to combat money laundering and terrorist financing, by means of measures adapted to their particular circumstances.¹⁵³ Recommendation 8 proposes “focused and proportionate measures” to prevent the abuse of non-profit organisations which are “identified as being vulnerable” to terrorist financing:

Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including: (a) by terrorist organisations posing as legitimate entities; (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.¹⁵⁴

In the Interpretative Note to this recommendation, FATF provides the following examples of “measures that could be applied to NPOs [non-profit organisations], in whole or in part, depending on the risks identified”:

- (i) NPOs could be required to license or register. This information should be available to competent authorities and encouraged to be available to the public.
- (ii) NPOs could be required to maintain information on: (1) the purpose and objectives of their stated activities; and (2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information could be publicly available either directly from the NPO or through appropriate authorities.

¹⁴⁹ Id, section 11, which amends section 12 of the *Nonprofit Organisations Act 71 of 1997*.

¹⁵⁰ Id, section 12, which inserts section 13(7) into the *Nonprofit Organisations Act 71 of 1997*.

¹⁵¹ Id, section 15, which inserts Chapter 3A into the *Nonprofit Organisations Act 71 of 1997*.

¹⁵² FATF website [here](#).

¹⁵³ Introduction to the FATF recommendations [here](#).

¹⁵⁴ [The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, 2012-2022, last updated March 2022](#), Recommendation 8, page 18.

(iii) NPOs could be required to issue annual financial statements that provide detailed breakdowns of incomes and expenditures.

(iv) NPOs could be required to have appropriate controls in place to ensure that all funds are fully accounted for, and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities. In this context, rules and regulations may include rules and standards applied by self-regulatory organisations and accrediting institutions. The range of such sanctions might include freezing of accounts, removal of trustees, fines, decertification, de-licensing and de-registration. This should not preclude parallel civil, administrative or criminal proceedings with respect to NPOs or persons acting on their behalf where appropriate. Specific licensing or registration requirements for counter terrorist financing purposes are not necessary. For example, in some countries, NPOs are already registered with tax authorities and monitored in the context of qualifying for favourable tax treatment (such as tax credits or tax exemptions).

(v) NPOs could be required to take reasonable measures to confirm the identity, credentials and good standing of beneficiaries and associate NPOs and that they are not involved with and/or using the charitable funds to support terrorists or terrorist organisations. However, NPOs should not be required to conduct customer due diligence. NPOs could be required to take reasonable measures to document the identity of their significant donors and to respect donor confidentiality. The ultimate objective of this requirement is to prevent charitable funds from being used to finance and support terrorists and terrorist organisations.

(vi) NPOs could be required to maintain, for a period of at least five years, records of domestic and international transactions that are sufficiently detailed to verify that funds have been received and spent in a manner consistent with the purpose and objectives of the organisation, and could be required to make these available to competent authorities upon appropriate authority. This also applies to information mentioned in paragraphs (ii) and (iii) above. Where appropriate, records of charitable activities and financial operations by NPOs could also be made available to the public.¹⁵⁵

The FATF evaluates countries three times a year regarding their measures to combat money laundering and terrorist financing, including the extent to which they implement the FATF recommendations, and then publishes a list of countries with weak measures. The FATF “black list” identifies countries “with serious strategic deficiencies to counter money laundering, terrorist financing, and financing of proliferation.”¹⁵⁶ In respect of “blacklisted” countries, the FATF “urges all jurisdictions to apply enhanced due diligence” and in the most serious cases, “to apply counter-measures to protect the international financial system from the ongoing money laundering, terrorist financing, and proliferation financing risks emanating from the [black-listed] country.”¹⁵⁷

Additional to the “black list” is the “grey list”, which identifies “countries that are *actively working* with the FATF to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing.” Countries on the “grey list” are placed under increased monitoring, which means that the country has agreed to quickly resolve

¹⁵⁵ Id, Interpretive Note to Recommendation 8 (Non-Profit Organisations), pages 59-60 (footnotes omitted).

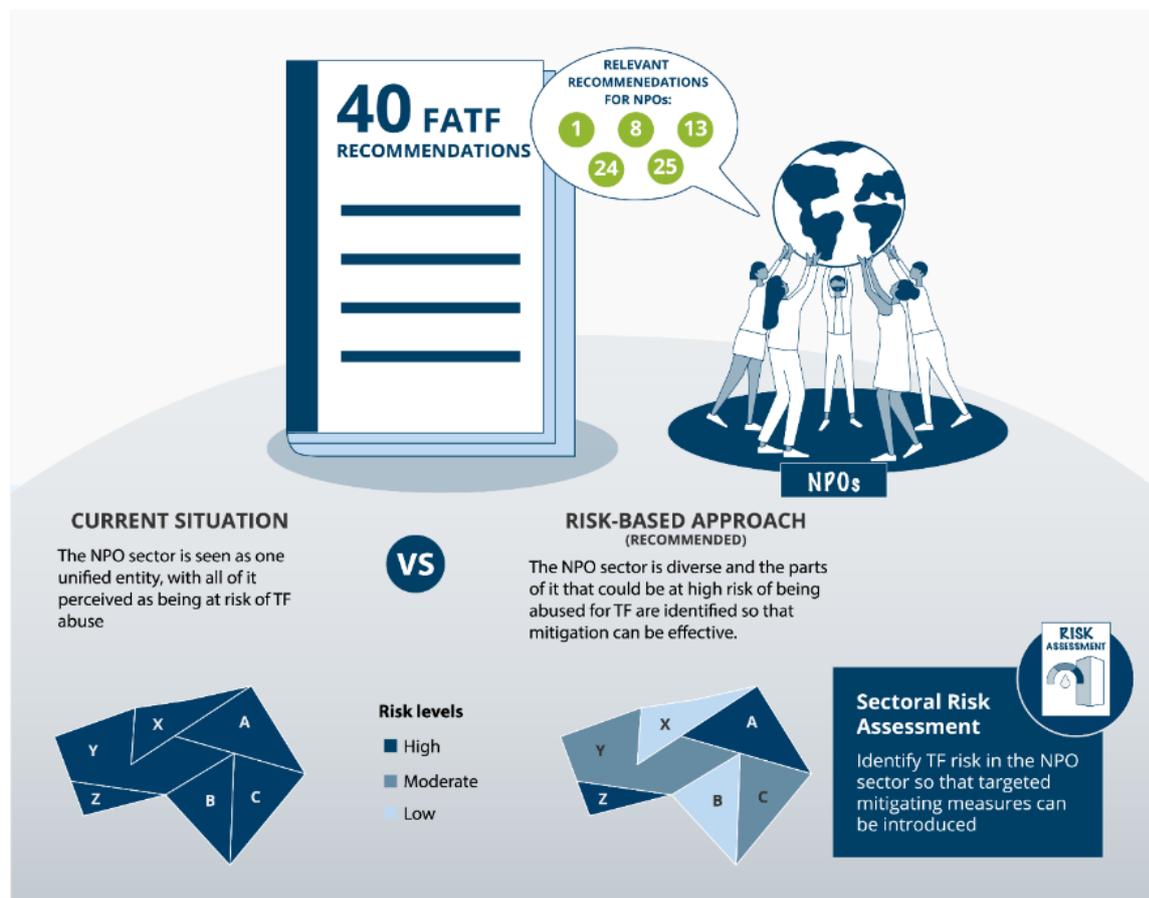
¹⁵⁶ [FATF Website: “Black and grey” lists](#). “Proliferation” means making or dealing in weapons that can cause mass destruction, such as nuclear weapons, biological weapons or related materials.

¹⁵⁷ Ibid.

“the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring”.¹⁵⁸

Namibia is not currently on either the “black list” or the “grey list”.¹⁵⁹

Due to the negative financial effects of a public listing by the FATF on either the “black list” or “grey list”, governments want to ensure that they have a good rating.¹⁶⁰ In the past, this concern has caused governments to over-regulate the NPO sector and to fall back on “one-size-fits-all” approaches to NPOs rather than utilising risk-based measures¹⁶¹ – even though the FATF specifically warns against this.¹⁶²



Source: Global NPO Coalition on FATF

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ [Global NPO Coalition on FATF website: Over-regulation.](#)

¹⁶¹ [Global NPO Coalition on FATF website: FATF & NPOs.](#)

¹⁶² “Countries should take steps to promote effective supervision or monitoring. A ‘one-size-fits-all’ approach would be inconsistent with the proper implementation of a risk-based approach as stipulated under Recommendation 1 of the FATF Standards.” [The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, 2012-2022, last updated March 2022](#), Interpretive Note to Recommendation 8 (Non-Profit Organisations), page 61.

Due to a tendency toward government overregulation, and persistent lobbying from the Global NPO Coalition on FATF, Recommendation 8 was revised in 2016. This revision removed the long-standing characterisation of NPOs as being “particularly vulnerable” to terrorist abuse, in favour of wording acknowledging that not all NPOs are equally at risk for terrorist abuse.¹⁶³

In the amended Recommendation 8, the FATF lays the focus on the application of a risk-based approach so that “legitimate charitable activity is not impacted”. Furthermore, in its document on “Best Practices on Combating the Abuse of Non-Profit Organisations” (last revised in 2015), FATF states:

24. Detailed registration procedures for NPOs [non-profit organisations], additional reporting requirements, requirement of appointing a designated staff responsible for counter-terrorism compliance, and an external audit of the organisation, may not be appropriate for CFT [countering the financing of terrorism] purposes for those NPOs facing little to no TF [terrorist financing] risk. Any of these or other TF risk mitigation measures should be proportionate to the TF risk they face.

However, in numerous cases, the implementation of FATF standards at national level has not been risk-based or proportionate, “leading to unintended consequences for the sector, including operational difficulties impacting freedoms of association and expression, and issues with financial access”.¹⁶⁴

For example, in the case of Zimbabwe’s laws on NGO registration, several UN Special Rapporteurs publicly condemned the use of such laws to overregulate the NPO sector. The statement of UN Special Rapporteurs emphasised that FATF Recommendation 8 -

has clarified that a risk assessment of the NPO sector requires countries to first identify which *subset* of NPOs is at risk of terrorist financing abuse, before then undertaking CFT [Countering the financing of terrorism] measures that are “risk-based,” “targeted,” “proportionate” and “effective” in light of those empirically assessed, differentiated sub-sectoral risks.¹⁶⁵

The failure to provide a clear process for determining if a type of organization is high risk or vulnerable to terrorist activities or financing gives state authorities “an overly broad margin of discretion to unduly interfere with the right to freedom of association”, as well as creating opportunities for unfair treatment and harassment.¹⁶⁶

¹⁶³ [Global NPO Coalition on FATF website: FATF & NPOs.](#)

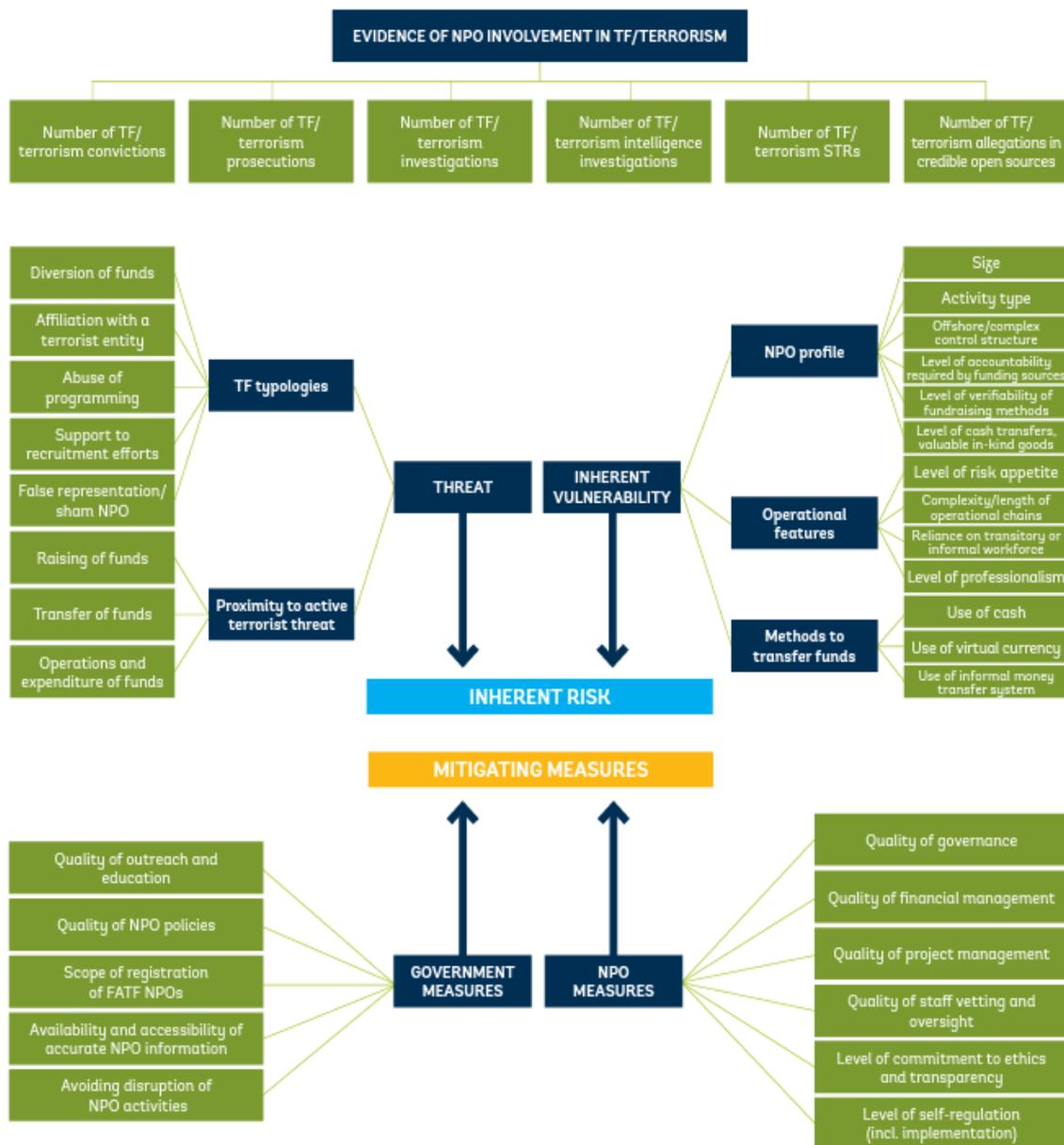
¹⁶⁴ Ibid; see also [Illustrative List of Overregulation of Non profit Organizations](#), Open Society Foundation, July 2015, which categorizes various types of overregulation encountered by NPOs in various countries, as a result of “the misinterpretation and/or misuse of the application of the Financial Action Task Force (FATF) regime, with a focus on Recommendation 8”.

¹⁶⁵ “Mandates of 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](#), 17 December 2021, page 5.

¹⁶⁶ Id, page 6.

In a more appropriate risk-based approach, a government, working in cooperation with civil society, would analyse the possible risks in the sector. As a point of reference, the World Bank Group has recently published a risk assessment tool for non-profit organizations which could be applied to identify risks and review the quality of mitigation measures.¹⁶⁷

After applying a risk assessment to develop a list of the most potentially vulnerable NGOs, mitigating measures such as increased monitoring and registration provisions can be introduced. Such an approach would fulfil the FATF recommendation and hence avert the danger of being “grey-listed”, without undue interference with the freedoms of association and expression - thus avoiding unwarranted encroachment on civic space.



¹⁶⁷ [Non-Profit Organizations \[Terrorist Financing\] Risk Assessment Tool: Identifying the FATF NPOs at risk of terrorist financing abuse](#), World Bank Group, June 2022.

In Namibia, there are already measures in place to prevent money-laundering by NGOs. The *Financial Intelligence Act 13 of 2012* requires places certain duties on “accountable institutions”. In 2019 the list of accountable institutions in the law was amended to add certain categories of non-profit organisations:

A non-profit organisation -

- (a) incorporated, as a non-profit association, under section 21 of the Companies Act, 2004 (Act No. 28 of 2004);
- (b) whether or not established under any law, that primarily engages in raising or disbursing funds for purposes of -
 - (i) charity, religion, culture, education, social activities or fraternity; or
 - (ii) any other type of welfare activity.¹⁶⁸

Accountable institutions must report certain categories of financial transactions to the Financial Intelligence Centre, including cash or electronic transfers above prescribed amounts, or transactions suspected of involving the proceeds of unlawful activities.¹⁶⁹

Accountable institutions also have the following duties:

- to regularly conduct money laundering and financing of terrorism or proliferation activities risk assessments, taking into account the scope and nature of its clients, products and services, as well as the geographical area from where its clients and business dealings originate.
- where they are not supervised or regulated by a supervisory or regulatory body, to register their prescribed particulars with the Centre for purposes of supervising compliance with the Act
- to develop, adopt and implement internal policies and procedures as prescribed, to effectively manage and mitigate risks of money laundering and financing of terrorism or proliferation activities,¹⁷⁰ which must include the identification of reportable transactions and the training of employees to recognise and handle suspicious transactions.
- to designate compliance officers at management level be in charge of the application of such internal programmes and procedures, including the proper maintenance of records and the reporting of suspicious transactions.
- to implement compliance programmes at its branches and subsidiaries within or outside Namibia.
- to develop audit functions to evaluate the effectiveness of any policies, procedures and controls developed to comply with this Act.

¹⁶⁸ Financial Intelligence Act 13 of 2012, as amended, Schedule 1, item 18.

¹⁶⁹ *Id.*, sections 32-34.

¹⁷⁰ As noted above, “proliferation” means making or dealing in weapons that can cause mass destruction.

The Financial Intelligence Centre can tailor the measures expected of accountable institutions on the basis of the risks involved and the size of the organisation. Failure to comply with the duties placed on accountable institutions is a criminal offence punishable by a fine of up to N\$100 million or, where the wrongdoing can be attributed to a representative of the accountable institution, to the specified fine or imprisonment for up to 30 years, or both.¹⁷¹

The *Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014* does not single out non-profit groups, but the general offences related to financing or supporting terrorism or proliferation activities would apply to civil society groups.¹⁷²

If these mechanisms need bolstering in respect of risky sub-categories of civil society groups, it would be possible to do this in a targeted way that would not hamper the vast majority of civil society groups that operate in good faith.

In fact, such a proposal is already on the table. In early 2023, following on Namibia's second evaluation by the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG), to assess compliance with its international commitments to combat money laundering and the financing of terrorism and proliferation, amendments to a number of relevant laws were proposed by Government. These amendments would, amongst other things, expand the duties of certain non-profit organisations under the *Financial Intelligence Act*.

The following definition is proposed for “specified non-profit organisation”:

“Specified Non-Profit Organisation” means a body corporate or other legal person, trustees of a trust, partnership, other association or organisation and any equivalent or similar structure or arrangement, established solely or primarily to raise or distribute funds for charitable, religious, cultural, educational, political, social, fraternal purposes or any other type of welfare activity with the intention of benefiting the public or a section of the public and which –

- i. receives donations or remittances from one or more higher risk jurisdictions; and
- ii. has remitted, or is anticipated to remit, at least 30% of its income in any one year to one or more ultimate recipients in or from one or more higher risk jurisdictions.¹⁷³

The “higher risk jurisdictions” referred to are defined as “jurisdictions that carry a higher risk for money laundering or terrorist financing or proliferation financing”.

It is proposed that non-profit groups that fall within this definition must register with the Business and Intellectual Property Authority, along with *all* foreign non-profit organisations. Such non-profit groups, whether or not they are registered, would be required to submit prescribed information to the Financial Intelligence Centre about their officer-bearers, management structures and operation. The proposed amendments would also set specific requirements for the officer-bearers of such groups, aimed at ensuring their honesty. The amendments would require the organisations in question to provide information about their

¹⁷¹ *Financial Intelligence Act 13 of 2012*, section 39.

¹⁷² *Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014*.

¹⁷³ Proposed *Financial Intelligence Amendment Bill* circulated for public comment by the Bank of Namibia, February 2023.

donors, and set requirements for their financial controls and record-keeping as well as criteria for project planning and monitoring.

**PROVISION PROPOSED BY GOVERNMENT FOR THE FINANCIAL
INTELLIGENCE ACT ON DUTIES OF SPECIFIED NON-PROFIT
ORGANISATIONS
February 2023**

Obligations of Specified Non-Profit Organisations

35A (1) A Specified Non-Profit Organisation shall not have legal personality unless it is registered and has been issued with a certificate of registration by the Business and Intellectual Property Authority.

- (2) (a) A Specified Non-Profit Organisation, including a foreign non-profit organisation that intends to operate in Namibia, must register prescribed information about its office-bearers, control structure, governance, management, administration and operations with the Centre and keep such information up-to-date with the Centre.
 - (b) a foreign non-profit organisation, that intends to operate in Namibia must be registered in terms of this Act before it commences operations, subject to paragraph (c), and in accordance with prescribed registration requirements, whereafter it will be regarded as a Specified Non-Profit Organisation.
 - (c) A Specified Non-Profit Organisation or foreign non-profit organisation that is operating in Namibia but is not registered in terms of this Act on the date of commencement of this provision, must register within the period determined by the Minister by notice in the Gazette, in accordance with prescribed transitional arrangements and registration requirements.
 - (d) A Specified Non-Profit Organisation or foreign non-profit organisation, whether registered in terms of the Act or not, must comply with the requirements of this Act.
- (3) (a) Every Specified Non-Profit Organisation shall have a Board which shall –
- (i) administer the property of the organization; and
 - (ii) carry out the objects of the organisation
- (b) A Board shall be set up in accordance with its charter or constitution or memorandum of association or Articles, whichever the case may be, and shall have the following duties and powers -
- (i) conduct the affairs of its organisation in accordance with its charter or constitution or memorandum of association or Articles, whichever the case may be,
 - (ii) generally, supervise the management and conduct of its organisation,
 - (iii) act honestly and in good faith with a view to promoting the best interests of the organisation; and
 - (iv) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- (c) A Board may appoint such officers as may be necessary for the effective discharge of its duties and obligations under this or any other Act, or its charter or constitution or memorandum of association or Articles, whichever the case may be,
- (d) An officer shall be under the supervision of the Board and shall act in accordance with the lawful instructions of the Board.
- (4) A person is disqualified from being an office-bearer of a Specified Non-Profit Organisation if the person -
- (a) is an unrehabilitated insolvent;

- (b) has been prohibited by a court to be a director of a company, or has been declared by a court to be delinquent in terms of the Companies Act, 2004 (Act No. 8 of 2004), or the Close Corporations Act, 1988 (Act No. 26 of 1988);
- (c) is prohibited in terms of any law to be a director of a company;
- (d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty;
- (e) has been convicted, in Namibia or elsewhere, and imprisoned with or without the option of a fine, or has been fined for theft, fraud, forgery, perjury or an offence -
 - (i) involving fraud, misrepresentation or dishonesty, money laundering, terrorist financing or proliferation financing activities as defined in the Financial Intelligence Act, 2012 (Act No. 13 of 2012) and the Prevention and Combating of Terrorist and Proliferation Activities Act 2014 (Act No 4 of 2014);
 - (ii) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in the Companies Act, 2004; or
 - (iii) under this Act, the Companies Act, 2004, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1988, the Competition Act, 2003 (Act No. 2 of 2003), the Financial Intelligence Act, 2012, the Namibia Financial Institutions Supervisory Act, 2001 (Act No. 3 of 2001), the Anti-Corruption Act, 2003 (Act No. 8 of 2003), the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014, or the Income Tax Act, 1981 (Act No. 24 of 1981); or
- (f) is an unemancipated minor or is under a similar legal disability.

(5) Every Specified Non-Profit Organisation shall have a registered office and physical presence in Namibia to which all communications and notices shall be addressed, and which shall constitute the address for service of legal proceedings on the organization.

- (6) (a) The charter or constitution or memorandum of association or Articles, whichever the case may be, of a Specified Non-Profit Organisation shall specify -
 - (i) the name of the organisation;
 - (ii) the particulars of the founder, including –
 - (aa) his name and address;
 - (bb) where the founder is a legal person or body corporate, its name and registered address and particulars of its office-bearers, control structure, governance and management; and
 - (cc) an address for the founder for service of documents;
 - (b) the purposes and objects of the organisation;
 - (c) details regarding the control structure, governance, management, administration and operations of the organisation;
 - (d) the endowment of the property which shall be the initial assets of the organisation;
 - (e) the beneficiary of the organisation or the manner in which he/she/it may be appointed and, if applicable, the manner in which he/she/it may be removed;
 - (f) the period, if any, for which the organisation is established;
 - (g) the address of the registered office of the organisation;
 - (h) the procedure for appointment of office bearers; and
 - (i) the procedure for the appointment of the Board and its powers and duties.
- (7) A Specified Non-Profit Organisation shall –
 - (a) keep proper records of –
 - (aa) all sums of money received, expended and distributed, specifying the purpose of any such receipt, expense and distribution;
 - (bb) all sales and purchases made by the organisation;
 - (cc) the assets and liabilities of the organisation;
 - (dd) the name of the beneficial owner, if any; and
 - (ee) where the beneficiary is a nominee, the name of the beneficial owner or ultimate beneficial owner.
 - (b) prevent financial abuse and misuse of resources and funds by establishing strong financial controls and procedures subject to Board oversight.

- (c) clearly state programme goals when collecting funds and ensure that funds are applied as intended and that information about the activities carried out is made publicly available.
 - (d) ensure that they are informed as to the sources of their income and establish criteria to determine whether donations should be accepted or refused.
 - (e) ensure that sources of financing, including details regarding the main contributors, both public and private, as well as the amounts contributed, should be available to the public.
 - (f) have a documented anti-corruption policy.
 - (g) analyse and define the risks of corruption in the specific context they are working in, like fraud, excessive pricing and kickbacks, double payments, cumulated salaries or exchange rate manipulation.
 - (h) In respect of donors a Specified Non-Profit Organisation shall -
 - (i) confirm the identity of donors, including regular donors, and keep records of such donors;
 - (ii) keep records of the mode of payment by donors whether by cheque, cash, direct credit or virtual currency;
 - (iii) keep records of the amount received from donors, whether domestic or foreign, whether significant or small.
 - (iv) keep records for categories of donations received (domestic /foreign philanthropy, domestic/foreign private individuals)
 - (v) disclose to the Centre whether funds were received or sent to high-risk jurisdictions, including the country, the amount and reason for the receipt or disbursement;
 - (vi) disclose to the Centre funds received from anonymous donors;
 - (vii) identify beneficiaries, whether domestic or foreign, and keep a list of such beneficiaries; and
 - (viii) conduct due diligence on donors, beneficiaries, members of the Board, directors of the company and shareholders.
 - (i) A Specified Non-Profit Organisation shall keep accounting records which shall –
 - (i) be sufficient to show and explain the transactions of the organisation;
 - (ii) disclose with reasonable accuracy, at any time, the financial position of the organisation; and
 - (iii) allow financial statements to be prepared.
- (8) (a) Every Specified Non-Profit Organisation shall keep at its registered office –
- (i) a file containing accurate records and a copy of all documents filed with the Centre, including accurate copies of its charter or constitution or memorandum of association or Articles, whichever the case may be;
 - (ii) the minutes of proceedings of any meeting of the Board;
 - (iii) a register showing the names and addresses of the members of its Board, any founder and any person who may have endowed assets to the organisation;
- (b) The records and copy of documents required to be kept by an organisation under this section shall be open for inspection by any founder, authorised officer, competent authority, supervisory body or the Centre during business hours.
- (9) A Specified Non-Profit Organisation shall have adequate systems in place for accurate project planning and monitoring and shall, amongst others -
- (a) establish internal controls and monitoring systems to ensure that funds and services are being used as intended by, amongst others, clearly defining the purpose and scope of their activities,
 - (b) identify beneficiary groups and consider the risks of terrorist financing and risk mitigation measures before undertaking projects.
 - (c) maintain detailed budgets for each project and generate regular reports on related purchases and expenses by establishing procedures to trace funds, services, and equipment, and carry out transactions through the banking system to maintain transparency of funds and mitigate the risk of terrorist financing.
 - (d) monitor project performance on a regular basis by verifying the existence of beneficiaries and ensuring the receipt of funds.

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|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (e) | take appropriate measures, based on the risks, to account for funds and services delivered. |
| (f) | verify and screen potential beneficiaries and partners against the United Nations Security Council Sanctions Lists, issued under Chapter VI of the United Nations Charter. |

This proposal would appear to be consistent with the FATF recommendations, since it attempts to identify a subset of non-profit groups that involve high risks and subject only those groups to registration and monitoring requirements. However, what is more worrying is this statement in the Explanatory Memorandum which accompanies the proposed amendments:

Since Namibia does not currently have a prudential regulator or legislative framework for the regulation of *all NPOs* [non-profit organisations], it is proposed that NPOs be dealt with in terms of the FIA [*Financial Intelligence Act*]. The FATF Standards require that NPOs are subject to a risk assessment for TF [terrorist financing], and *until such time that the regulatory framework is established*, the FIC [Financial Intelligence Centre] is responsible for supervising or monitoring categories of NPOs identified at risk of terrorist financing abuse.¹⁷⁴

The assumption behind this statement seems to be that a regulatory framework for *all* non-profit groups is already being contemplated, despite the concerns raised by civil society in this regard.

7. Conclusion

One common pattern that is evident from the experience of other countries in Africa is that the introduction of relatively innocent registration schemes, whether ‘voluntary’ or ‘mandatory’, can be a prelude to increasingly more restrictive measures. It is also clear that ostensibly voluntary registration requirements can become mandatory in practice if Government and non-government donors place reliance on the scheme. Voluntary registration may then evolve into registration requirements that are legally mandatory – and which may well violate the right to freedom of association. Any registration scheme thus gives rise to the “thin edge of the wedge” problem; there is a very fine line between a constitutional registration scheme and one that does not carry the risk of infringing constitutional rights.

In Namibia, there are already numerous legal safeguards in place to address the misappropriation of funds and to prevent money laundering and terrorism financing – wrongs that are often cited to justify NGO registration requirements. Thus, it does not seem that an overarching registration scheme would add anything to these issues.

The main vehicles used to establish NGOs in Namibia – voluntary associations, trusts, and non-profit companies – are all functional, well-used in practice, and relatively easy and inexpensive

¹⁷⁴ Explanatory Memorandum to proposed *Financial Intelligence Amendment Bill* circulated for public comment by the Bank of Namibia, February 2023, section 4.2.15: Definition of Specified Non-Profit Organisation (emphasis added).

to access.¹⁷⁵ Thus, the lack of unified legislation on the forms that can be used to set up NGOs has not hindered a wide diversity of civil society groups from operating in Namibia.

Even the justification offered in the draft policy for the registration scheme does not hold water. Partnerships between Government and civil society can and do take place without such a legal framework. Furthermore, the *Public Private Partnership Act 4 of 2017* does not require private entities to register globally as a path to eligibility to engage in partnership agreements with Government – so why should this be necessary for civil society?

One major concern is the impact of any registration system on grassroots organisations, which may often lack the resources and capacity to negotiate a registration process and annual information updates. This could result in placing such groups even farther outside the mainstream and at a disadvantage in securing funding, even when their social contribution and financial management have been exemplary.

A further worry is an emphasis on “development”. As mentioned above, NGOs may oppose some kinds of development based on concerns about social or environmental damage or threats to human rights. Other NGOs may simply work in areas that do not fit well under a “development” agenda. A law that is premised around the concept of “development” (as Government sees it) may leave some NGOs at odds with the mainstream government views – and, if this leaves them unable or unwilling to access Government registration, it could disadvantage them in the search for funding and support. It is perfectly valid – and even desirable – in a democracy for different civil society groups to embrace different and even conflicting priorities and goals. In fact, such diversity is one hallmark of a vibrant civil society – and there is a danger that any kind of Government registration scheme may end up channelling groups into mainstream postures or favouring those who most closely align with Government views.

It is certainly acceptable for Government to seek partnerships with civil society groups with which it has a common ground or shared objectives. But eligibility for a government partnership need not be dependent on any form of generalised registration. Government could easily require appropriate documentation from a group it wished to partner with on an *ad hoc* basis, purely for the purposes of eligibility for the partnership in question – as is the case with private entities under the *Public Private Partnership Act 4 of 2017*. Groups that were not interested in a potential Government partnership would then not be burdened (or threatened) with any general registration requirements.

When it comes to enhancing legitimacy and seeking new sources of funding, the following recommendation for action by civil society itself is one to consider:

To counter some of the pernicious accusations made against NGOs, particularly that they are self-serving, “foreign agents,” or otherwise lacking in transparency, [civil society] groups

¹⁷⁵ In fact, CIVIC +264 is in the final stages of producing an updated manual on how to utilise each of these three forms of establishment.

should work to build legitimacy through their rootedness in communities and commitment to service and good governance, while ensuring that they are free of corruption (including by adopting internal anticorruption policies). Those that rely exclusively on foreign donors should build capacity to implement projects with limited donor input and pursue innovative ways to raise resources locally. In particular, NGOs should cultivate direct appeals to the public—a potential resource that is used rarely, if at all—to tap funds from the growing middle class.¹⁷⁶

In summary, we believe that Namibia should not implement any overarching registration policy for civil society. The draft policy and draft bill proposed in the past fail to show persuasive potential benefits of such an approach. We recommend that Namibia should reject the African trend toward increasing control of civil society and rather maintain its existing reputation for providing a free and democratic environment where civil society can operate freely.

¹⁷⁶ Godfrey Musila, “[The Spread of Anti-NGO Measures in Africa](#)”, Freedom House, 2019, page 21.