

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders**

Ref.: OL ZWE 1/2023  
(Please use this reference in your reply)

16 August 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 50/17, 44/5, 52/9 and 52/4.

In this connection, we would like to offer the following comments on the Criminal Law (Codification and Reform) Amendment Act (no. 10 of 2023), which was enacted into law by the Parliament and the President of Zimbabwe on 14 July 2023.

We note that several provisions in this Criminal Law (Codification and Reform) Act [chapter 9:23] (the Act) may contravene Zimbabwe's international human rights obligations, including the right to life, the right to freedom of peaceful assembly and of association, the right to freedom of opinion and expression, the right to privacy, the right to participate in public affairs and the right not to be deprived of citizenship.

We respectfully address several human rights challenges in relation to the definitions of "sovereignty" and "national interest" contained in the Act which, in our view, are overly broad and risk negative and disproportionate impacts on particular groups, on due process, on the right to liberty and security of persons, as well as on the exercise of freedom of opinion and expression, and freedom of peaceful assembly and of association.

We note regarding the timing of these amendments, which are made prior to the presidential and parliamentary Harmonised Elections planned to take place on 23 August 2023, that some civil society representatives and human rights defenders have been preparing to play a critical role in facilitating and overseeing forthcoming elections in Zimbabwe. We underscore that civil society plays a vital role throughout the election process, including by monitoring human rights violations and reporting on possible fraudulent practices, and contributing to guaranteeing the integrity of the voting process. It is of paramount importance that civil society has a safe space to exercise effective oversight, without undue restrictions, intimidation, or reprisals. We consider that the amended Act may have a chilling effect on Zimbabwean Civil Society Organizations (CSOs) and human rights defenders and may have grave consequences for the exercise of civil and political rights in the country in general.

We would also like to reiterate the observations and recommendations made by the Special Rapporteur on freedom of peaceful assembly and of association in his

report A/HRC/44/50/Add.2 following his country visit to Zimbabwe in 2019, where he urged the Government of Zimbabwe to ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor subjected to threats, harassment, persecution, intimidation and reprisals (para. 123(f)).

### *Background*

According to information received, on 16 November 2021, the Ministry of Justice, Legal and Parliamentary Affairs of Zimbabwe informed the Parliamentary Portfolio Committee on Foreign Affairs and International Trade that the Cabinet had approved principles to amend the Criminal Law (Codification and Reform) Act (the Act). The principles were meant to amend the Act and to criminalise citizens' unauthorised negotiations with foreign governments. It was communicated that the justification for the amendment was the need to incorporate section 12 of the Constitution of Zimbabwe, which concerns Zimbabwe's foreign policy. The Parliament Committee was advised that the proposed Act would criminalise, among others, unauthorised private organisations' engagement with foreign governments, which relates to the country's foreign relations and policies towards other sovereign nations. On 23 December 2022, the Amendment Bill was gazetted. Following the first and the second readings of the Amendment Bill on 1 and 14 February 2023, the Portfolio Committee on Justice, Legal and Parliamentary Affairs conducted public hearings to gather the views on the Bill. The National Assembly then passed the Amendment Bill on 31 May 2023, which was followed by the Senate. On 14 July 2023, the President assented to the Bill.

### *Applicable International Human Rights Law Standards*

We refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which Zimbabwe acceded to on 13 May 1991, and the Universal Declaration of Human Rights (UDHR). In particular, we would like to draw your Excellency's Government's attention to articles 6, 7, 9, 17, 19, 21, 22 and 25 of the ICCPR which guarantee, respectively, the right to life, that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of persons and to be free from arbitrary detention, the right to privacy, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association, and the right to participate in public affairs.

We would also specifically like to underline that the "principle of legal certainty" under international law, enshrined in articles 9(1) and 15 of the ICCPR and article 11 of the Universal Declaration of Human Rights (UDHR), requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence.<sup>1</sup>

We remind your Excellency's Government of the applicable international human rights standards outlined by the African Charter on Human and Peoples' Rights (ACHPR), specifically articles 4, 5, 6, 9, 10, 11 and 13, which safeguard the rights to life, to not be subjected to torture, cruel, inhuman or degrading punishment and treatment, liberty and security of person, to be compensated in circumstances of arbitrary arrest or detention, to express and disseminate the opinions within the law, to free association, to assemble freely, and to participate freely in the government and to

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<sup>1</sup> A/73/361, para. 34

have equal access to the public service of his country.

We would also draw your Excellency's Government's attention to article 22(1) of the ICCPR which states that "everyone shall have the right to freedom of association with others." Under article 2 of the ICCPR, States have a responsibility to take deliberate, concrete and targeted steps towards meeting the obligations recognized in the Covenant, including by adopting laws and legislative measures as necessary to give domestic legal effect to the rights stipulated in the Covenant and to ensure that the domestic legal system is compatible with it.

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism,' subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. We would like to emphasize that any restriction on freedom of expression that a government seeks to justify on grounds of national security or in this case national interest, must have the genuine purpose and the demonstrable effect of protecting a legitimate national security interest.<sup>2</sup>

We would also like to recall the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular, articles 1 and 2 which state that everyone has the right to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, as well as articles 5(a) and (b), 6(b) and (c) and 12 (paras. 2 and 3). In this regard, we also wish to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals and groups engaged in promoting and defending human rights.<sup>3</sup>

We also remind your Excellency's Government that article 15 of the UDHR establishes that everyone has the right to a nationality, and no one shall be arbitrarily deprived of it nor denied the right to change his nationality.

We would like to recall article 25 of the ICCPR, which defines the obligations of States parties in connection with the right to take part in the conduct of public affairs, vote and be elected at genuine periodic elections, and have equal access to public service positions. The right to vote and be elected in elections is intrinsically linked to a number of other human rights, including the right to freedom of opinion and expression and the right to freedom of association and of peaceful assembly.<sup>4</sup>

Lastly, we would like to refer to article 6(1) of the ICCPR, which guarantees the inherent right to life of every individual and provide that this right shall be protected by law and that no one shall be arbitrarily deprived of his life.

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<sup>2</sup> General Comment No. 34, CCPR/C/GC/34

<sup>3</sup> A/HRC/RES/22/6, para. 10; See also E/CN.4/2006/98, para. 47.

<sup>4</sup> General comment no. 25, CCPR/C/21/Rev.1/Add.7

For the reasons detailed below, we have reservations that the Act may be contrary to Zimbabwe's international human rights obligations. Its enactment may have grave consequences for civic space in the country. Given the multitude of issues discussed below, we respectfully urge your Excellency's Government to consider repealing section 22A of the Act in its entirety and to refrain from adopting any such provisions which restrict rather than enable and protect the rights to freedom of expression, freedom of peaceful assembly and association.

#### *Definition of National Interest*

According to the Act, any association whose activity has the purpose of "*willfully injuring the sovereignty and national interest of Zimbabwe*" (section 22A(1)) will be subject to criminal sanctions. We would first like to emphasize that any restriction on freedom of expression, peaceful assembly and association on the basis of "*national interest*" is not permitted under international human rights law. "National interest" is indeed not a valid ground to restrict these freedoms under articles 19, 21 and 22 of the ICCPR.

In addition, the Act criminalizes any person who "actively partakes" in the meeting that has the objective of:

- "*military or armed intervention in Zimbabwe by a foreign government;*
- *subverting, upsetting, overthrowing or overturning the constitutional government in Zimbabwe or*
- *in any meeting whose object (or one of whose objects) the accused knows or has reasonable grounds for believing involves the consideration of or the planning for the implementation or enlargement of sanctions or a trade boycott against Zimbabwe (whether those sanctions or that boycott is untargeted, or targets any individual or official or class of individuals or officials, but whose effects indiscriminately affect the people of Zimbabwe as a whole or any substantial section thereof).*" (section 22A (2-3))

We note that such broad terms and definitions because of their sweeping nature leave them open to arbitrary interpretation. Under international law, any restriction must have a legal basis, indicating that it should be prescribed by law, which implies that its provisions must be formulated with sufficient precision and that the law must be accessible. The broad character of these phrases could entail that a range of speech and association activities protected under international human rights law would be characterized domestically as "treason" or the attempt to "subvert constitutional Government" (section 22(i-ii)). Such a characterization may also permit the arrest, detention or harassment of individuals exercising their internationally protected rights, restrictions of which could constitute arbitrary deprivations of liberty under international law, and ultimately risk the conflation of domestic protest, dissent, or peaceful defense of human rights with treason. Such vague and overly broad definitions may have a chilling effect on the freedom of peaceful assembly and association and the freedom of expression.

We observe that the potential punishments for those accused of “willfully injuring the sovereignty and national interest of Zimbabwe” may be disproportionate due to the broad range of speech or activities that may fall under these unprecise definitions. In this context, we consider that such changes in legislation may have negative consequences on human rights defenders and civil society actors. The risk of vaguely worded provisions is that they may be applied to target the legitimate activities of political opposition, critics, dissidents, civil society, human rights defenders, lawyers, religious clerics, bloggers, artists, musicians and others.<sup>5</sup> We note that such provisions may be employed in a punitive and arbitrary manner against individuals expressing criticism of the Government, rather than against those posing direct and concrete threats to national security.

While national security is recognized in the ICCPR as a legitimate aim to restrict freedom of expression, association and peaceful assembly, it must be limited in its application to those situations in which the interest of the whole nation is at stake.<sup>6</sup> States must “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight.”<sup>7</sup>

*Rights to Freedom of Opinion and Expression, Peaceful Assembly and Association*

The Act further criminalizes any person who “actively partakes” in the aforementioned activities. The law defines it as “the intention of, or in the role of, promoting, advancing, encouraging, instigating or advocating for the object for which the meeting is convened” (as distinguished by those who attend such meetings but discourage or repudiate the said objective). (section 22A(1)) The “meeting” is defined as any communication between two or more persons happening virtually or in person, which involves a foreign government or any of its “agents, proxies or entities” that the person knew or had grounds for believing acted on behalf of or with the knowledge, approval or acquiescence of the foreign government concerned. (section 22A(1)).

We note that this broad definition may allow restrictions on discussions related to human rights issues, economic sanctions or trade boycott, including any investments to Zimbabwe, among many others.

Under the law, it is also an aggravating circumstance to a charge if the person at the meeting “made or submitted for consideration or endorsed any statement which he or she knew to be false or had no reasonable basis for believing to be true to prove that an economic sanctions or trade boycott against Zimbabwe (or against any individual or official or class of individuals or officials whose effects indiscriminately affect the people of Zimbabwe as a whole or any substantial section thereof) were implemented as a result of any action taken by the accused.” (Section 22(40)b) The Act also stated that “it should not be a defence if the person realized only during the meeting the actual subject and objective of the meeting.” (Section 22A(5))

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<sup>5</sup> A/HRC/37/52, para. 47

<sup>6</sup> A/71/373, para.9

<sup>7</sup> Ibid.

Using such broad and imprecise phrases and terms would make it particularly difficult for individuals to understand which conduct falls within the ambit of the law and which does not. Accordingly, the provisions provide for a high risk of arbitrary or unlawful decisions, contrary to the standards related to the right to freedom of expression, freedom of association and of peaceful assembly.<sup>8</sup>

We remind your Excellency's Government that article 19 of the ICCPR states that "everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Even where the opinions expressed by people are critical of the State, the State has a positive obligation to foster and ensure an enabling environment in terms of enjoyment of the rights to freedom of expression, peaceful assembly and association, so that individuals are able to exchange, communicate, information and opinions, and contribute to the building of a just society freely and without fear.<sup>9</sup> The conditions for permissible restrictions are reflected in article 19(3) of the ICCPR and in numerous regional and global human rights treaties.

In this regard, we note that individual provisions may permit the criminalisation of political and religious dissent, critical discussion on human rights, independent journalism and media independence, among others. Such broad terms may also affect human rights defenders, the non-profit sector, cultural, religious or minority associations or organizations, and civic space more broadly, as well as target any activity they carry out such as protests, gatherings, meetings with the donors or international organizations, critical statements against the government.

We also note that these provisions may involve interference with the privacy of individuals concerned through undue interception of communications to access the information described in the Act.

We note that the Act refers to individual communications and meetings, whether happening in person or virtually, with the "agent, proxy or entity" that "the accused knew or had grounds for believing was acting on behalf of, or with the knowledge, approval or acquiescence of, the foreign government concerned." (Section 22(A))

We have reservations that this new provision may limit the participation of civil society in intergovernmental meetings, such as the Human Rights Council, and may thus have a chilling effect on civil society actors and human rights defenders.

### *Criminal Penalties*

We consider that the criminal penalties provided for in this new legislation may contravene the requirements of legitimate aim, legality, necessity and proportionality in a manner inconsistent with your Excellency's Government's obligations under the international norms and standards.

In particular, the Act provides that the following penalties will apply:

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<sup>8</sup> Ibid.

<sup>9</sup> A/HRC/20/27, para. 63

In case of military or other armed intervention in Zimbabwe by the foreign government concerned or another foreign government, or by any of their agents, proxies or entities, the same penalties as for treason will apply (under section 20(1) of the Criminal Code).

*This could entail the death penalty or imprisonment for life.*

In case of subverting, upsetting, overthrowing or overturning the constitutional government in Zimbabwe, the same penalties as for subverting constitutional government will apply (under section 22 of the Criminal Code).

*This would lead to a penalty or imprisonment of up to 20 years.*

Any meeting whose object (or one of whose objects) the accused knows or has reasonable grounds for believing involves the consideration of or the planning for the implementation or enlargement of sanctions or a trade boycott against Zimbabwe (whether those sanctions or that boycott is untargeted, or targets any individual or official or class of individuals or officials, but whose effects indiscriminately affect the people of Zimbabwe as a whole or any substantial section thereof) shall be guilty of willfully damaging the sovereignty and national interest of Zimbabwe and liable to:

*a level 12 fine (up to 2,000 USD), and/ or imprisonment for a period not exceeding ten years.*

If the offence is attended by the aggravating circumstances referred to in subsection (4) or (6) the following applies:

- *termination of citizenship, if the person is a citizen, unless it would render them stateless;*
- *cancellation of the permanent resident status, if the person is a permanent resident;*
- *prohibition from being registered as a voter, or voting at an election for a period between 5-15 years;*
- *prohibition from filling a public office for a period between 5-15 years;*  
*or*
- *declaration that any public office held be vacated from the date of conviction.*

### *Right to Life*

We note that the proposed death penalty could result in the arbitrary deprivation of life, and that the Act appears to be contrary to the fundamental principle that the punishment must be commensurate with the crime. We recall that article 6(1) of the ICCPR guarantees the inherent right to life, which includes protection against any arbitrary deprivation of life. Article 6(2) highlights that in countries which have not abolished the death penalty, the sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the

time of the commission of the crime. Additionally, general comment no. 3 of the ACHPR specifies that in those States which have not yet abolished the death penalty it is vital that it is used for only the most serious crimes – understood to be crimes involving intentional killing. In any other circumstance, the subsequent application of the death penalty will be considered a violation of the right to life.<sup>10</sup>

### *Citizenship Stripping*

We also note that the provision that provides for citizenship stripping may be used as a tool to silence dissidents criticizing the Government. Taking into account the broad range of activities criminalized within the Act, we caution that the revocation of citizenship could be arbitrarily imposed, thus affecting peaceful protesters, humanitarians, lawyers, academics, human rights defenders or journalists.

We remind your Excellency's Government that, to avoid arbitrariness, deprivations of nationality must: 1) conform to domestic and international law; 2) serve a legitimate purpose consistent with international law; 3) be proportionate to the interest the State seeks to protect; and 4) occur with sufficient procedural guarantees and safeguards. Even in such cases, however, the loss or deprivation of nationality must satisfy the principle of proportionality.<sup>11</sup> As set out by the International Law Commission, the State is not justified in depriving a person of nationality for the sole purpose of expelling him or her,<sup>12</sup> nor can the State be justified in depriving for the purpose of denying a national entry into the territory, given that nationals have the right, enshrined in article 13(2) of the UDHR, to return to their country of nationality.<sup>13</sup>

The long-term human rights consequences of extended prison sentences for the breach of national interest and cumulative administrative measures after criminal sentences are completed, would have a substantial impact on family relationships and the human rights of individuals within families. A human rights-compliant proportionality assessment must be read in conjunction with the right to family life, as protected by article 17 of the ICCPR and article 18(1) of the ACHPR, as well as with article 3(1) of the Convention of the Rights of the Child, which enshrines the principle that in all actions concerning children, the best interest of the child shall be a primary consideration.

### *Right to Participate in Public Affairs*

Furthermore, we would like to highlight that the full protection of the right of peaceful assembly is possible only when other, often overlapping, rights are also protected, notably freedom of expression, freedom of association and political participation.<sup>14</sup> Article 25 of the ICCPR recognizes the right to participate in public affairs, including the following three elements: (a) the right to take part in the conduct of public affairs; (b) the right to vote and to be elected; and (c) the right to have access to public service.

<sup>10</sup> General Comment No. 3, ACHPR, para. D(24)

<sup>11</sup> A/HRC/25/28, para. 4

<sup>12</sup> General Comment No. 27, CCPR/C/21/Rev.1/Add.9, para. 21

<sup>13</sup> Institute on Statelessness and Inclusion, "Principles on Deprivation of Nationality as a National Security Measure," principle 7.2.1.2  
CCPR/C/GC/37, para. 9.

In this regard, we note that the Act allows for the following additional punishments, on the motion of the prosecutor, if there are “aggravating circumstances” in the offence related to active partaking in a sanctions/trade boycott meeting:

- prohibition from being registered as a voter, or voting at an election for a period between 5-15 years;
- prohibition from filling a public office for a period between 5-15 years;  
or
- declaration that any public office held be vacated from the date of conviction.

We would like to remind Your Excellency’s Government that the right to vote may be subject to specific restrictions only. Therefore, excessive restrictions on the voting rights of convicted prisoners may amount to discriminatory limitations. States should not impose automatic blanket bans on the right to vote for persons serving or having completed a custodial sentence that does not take into account the nature and gravity of the criminal offence or the length of the sentence.<sup>15</sup> Additionally, those who have not been convicted should not be excluded from exercising the right to vote.<sup>16</sup>

Such additional punishments for the “aggravating circumstances,” especially in addition to a penalty consisting of a fine may be incompatible with international human rights law, including article 25 of the ICCPR, which states that everyone has the right to take part in the government of his or her country, directly or through freely chosen representatives.

It is also widely recognized that the right to take part in the conduct of public affairs covers the formulation and implementation of policy at the international and regional levels.<sup>17</sup> Civil society actors who choose to participate in regional and international meetings must be free to do so safely and not be subject to acts of reprisal.<sup>18</sup> States should respect, protect and facilitate the rights to freedom of expression and to freedom of peaceful assembly and of association in connection with the exercise of the right to participate at the international and regional levels. Thus, restricting individuals’ meetings with the representatives of foreign governments appears to be contrary to international human rights standards.

### *Conclusions*

We would like to remind Your Excellency’s Government that States have the primary responsibility and duty to protect, promote, and realise all human rights and fundamental freedoms by taking necessary measures to create the social, economic, political and other conditions and legal guarantees required to ensure that all persons under their jurisdiction, individually or collectively, can enjoy these rights and freedoms in practice.

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<sup>15</sup> Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs, para. 42; See also CCPR/C/EST/CO/4, para. 34; and CCPR/C/TKM/CO/2, para. 51.

<sup>16</sup> General Comment No. 25, CCPR/C/21/Rev.1/Add.7, para. 14

<sup>17</sup> General Comment No.25, CCPR/C/21/Rev.1/Add.7, para. 5

<sup>18</sup> Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs, para. II(g)

In light of the restrictions of the rights that are implicated by the amended Act, we respectfully urge your Excellency's Government to consider repealing section 20A of the Act in its entirety. We urge Your Excellency's Government to refrain from further adopting such provisions that appear to restrict rather than enable and protect the rights to freedom of expression and to freedom of association and of peaceful assembly. We encourage holding further, multistakeholder consultations with CSOs, journalists, human rights defenders, and other relevant actors, including minority groups and women's organizations, in the process of redrafting any piece of legislation in this field.

We remain at your disposal to provide further technical assistance on the issues addressed in this communication, should Your Excellency's Government deem it useful.

As it is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify matters brought to my attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please explain how the amended Act is compatible with Your Excellency's Government's obligations under articles 6, 7, 9, 17, 19, 21, 22 and 25 of the ICCPR.
3. Please explain how Your Excellency's Government intends to ensure the criminalization of certain behaviours under the amended Act will not lead to undue restriction to the enjoyment of the right to freedom of expression, as well as the right to freedom of peaceful assembly and association, guaranteed by articles 19, 21 and 22 of the ICCPR.
4. Please explain what specific steps and measures Your Excellency's Government plans to take to ensure conformity with international human rights standards or to repeal section 20A of the Act in its entirety.
5. Please explain what measures have been taken or are being considered to ensure that human rights defenders and civil society actors in Zimbabwe can carry out their legitimate activities without fear of harassment, intimidation, or other undue restrictions.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Clement Nyaletsossi Voule  
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