

African Agora Watch



Southern Africa: A Shrinking Public Space

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Introduction

An open civic space characterised by friendly laws, an accessible regulatory and institutional framework shaped by global best practice and adequate flows of funding support is essential for the consolidation of democracy. Formal entities within civil society such as non-governmental organisations (NGOs), associations and community-based organisations (CBOs), play a critical role in contributing towards the enhancement of citizen agency, ensuring accountability for those in power and nurturing leaders. These institutions contribute to wider societal improvements by stimulating dialogue, campaigning for a more inclusive society, providing services, developing a sense of community and interrogating the policies of those in power (ACCORD, 2018).

This report is being prepared at a time when there are global concerns about the prospects of democracy particularly in Africa. According to Freedom House (2022, p.1), “...global freedom faces a dire threat.” Across the globe, enemies of liberal democracy have become more effective at co-opting or circumventing the norms and institutions meant to support basic liberties, and, at providing aid to others who wish to do the same. In countries with long-established democracies, internal forces have exploited the shortcomings within their systems, thus, distorting national politics to promote hatred, violence and unbridled power. This is aptly illustrated in Africa where the African civic space faces the threat of closure due to several factors ranging from unfriendly and punitive laws that seek to undermine the freedoms of association, free speech

and thought. According to the latest report by Freedom House (2023), the Southern African region is made up of four free countries [Botswana, Lesotho, Namibia and South Africa], five partly free countries [Malawi, Madagascar, Mozambique, Tanzania and Zambia], and three countries which are not free at all, and these are Angola, Eswatini and Zimbabwe.

The ongoing responses to the threat of terrorism have led to the need for new laws which regulate the flow of funds. However, many African governments have used the threat of terrorism to restrict the actions of civil society organisations within their jurisdictions. In the past two years, three such laws have been proposed: in Malawi (NGO Amendment Bill 2022), in Namibia (Access to Information Bill 4/2020) and in Zimbabwe (PVO Amendment Bill 2021). These laws have been proposed in order to regulate the activities within civil society. This report is based on fieldwork carried out across the Southern Africa Development Community (SADC) region and ongoing real-time assessments made possible through the online observatory of civic space in the region. The laws and regulations under discussion focus on several but interrelated issues to do with the ease of registration, ease of moving funds, freedom of association, ease of resource mobilisation and freedom of expression. The African Agora, and online portal, measure the extent to which the freedoms to do with ease of registration, ease of moving funds, association, resource mobilisation and expression are under threat using a weighting scheme comprehensively described

in the ensuing discussion. There are five scores for each dimension,

and these are: open, narrow, obstructed, repressed and closed.

1.1 Background and Contextualisation

[Smidt \(2018\)](#) observes that since the end of the Cold War, civil society organisations (CSOs) which focus on governance issues have increased across Sub-Saharan Africa. The number of NGOs promoting human rights and democracy have since increased progressively. Many private, non-profit, voluntary organisations - known collectively as CSOs - that are independent from the state are now engaged in monitoring government performance and ensuring that governments respect human rights and reduce corruption and breaches of democracy. Over the last two decades, Sub-Saharan Africa has seen an increase in the number of governments attempting to subdue civil society organisations that are focused on tackling human rights and social justice concerns.

Thus, the operating environment for civil society organisations has qualitatively deteriorated. Governments have mostly abused the consensus on the war against terror to produce laws which make it difficult for CSOs to exercise their

freedoms, particularly their freedom to fundraise. Most governments have gone as far as introducing laws which threaten the existence and viability of civil society organisations across the sub-Saharan region. Governments have also used subtle methods to limit civil society's focus areas of work. Such underhanded methods include putting in place time-consuming NGO registration procedures ([Xinwa, 2020](#)). Xinwa further articulates that across the world, governments have reacted to civil society advocacy by imposing restrictive laws and policies that infringe on the freedom to associate. Examples of the existence of such restrictive laws include countries such as Zimbabwe, Nigeria, Uganda, Kenya, Zambia, and Malawi. Other countries have imposed stringent registration processes or foreign funding regulatory requirements on civil society organisations. As a result of these regressive policies, civil society organisations are finding it increasingly difficult to mobilise, to advocate and to make governments accountable to upholding human rights and social justice issues.

1.2 Methodology

Our report is based on findings collected throughout the year 2022 and collated on the [African AGORA](#). In determining the viability of the civic space, we measure the extent to which existing and new legislation affect freedom of assembly, freedom of expression, ease of fundraising, ease of movement of funds, ease of

registration and CSO development. Freedoms of assembly and expression are defined using an existing normative framework established by the [UN Charter on Human and Civil Rights](#). The data was collected using standard desktop research methods across 6 predetermined thematic areas outlined in Table 1 below.

TABLE 1 The Description of Legislation Focus

Thematic Area	Description of legislation focus
Freedom of Assembly	The extent to which existing and new legislation constrain/ promote the freedom of assembly.
Freedom of Expression	How the government responds to protests, criticism and debate.
Ease of Fundraising	The extent to which NGOs can fundraise.
Ease of Movement of Funds	The extent to which they impact NGO operations.
Ease of Registration	Legal frameworks and operational procedures that determine the documentation required for registration, the time it takes to register as well as re-register, the process and the actual cost of registration.
CSO development	The existence and extent to which the laws constrain/ promote the development of the NGO space.

The study covers 12 countries in the SADC region: Angola, Botswana, Eswatini, Lesotho, Madagascar, Malawi, Mozambique, Namibia, South Africa, Tanzania, Zambia and Zimbabwe. The desktop research focused on identifying primary laws that govern civil society as well as other laws and policies that have an impact on the formation and effectiveness of CSOs. We examined existing laws within a specific country and which are related to any of the thematic areas listed in Table 1.

In relation to national legislation, the [African Agora](#) examines various pieces of legislation that relate to or have an influence on civic space participation. The extent of openness of the civic space in this regard, is determined by both the existence of the right of law and the guaranteed access to the

right through enforcement without undue limitation and barriers.

Based upon the laws and CSOs' responses in each country, each thematic area was given a score between 1 and 5 depending on the extent to which the laws negatively affect CSOs. A score of 5 is assigned when the existing provisions immobilise CSOs so much that they cannot function, while a score of 1 means that there are no challenges for CSOs (explained in Figure 1). The final index score is then calculated as an average across the 6 thematic areas. The index score is divided evenly into 5 categories of openness and the result is used on the index platform. For that reason, each country is assigned one of the following categories which are fully explained below in Table 2.

FIGURE 1 Thematic Area Scoring



TABLE 2 Thematic Area Scoring

Classification	Scoring	Description
Open	<=1	The state both enables and safeguards the enjoyment of civic space for all people. Levels of fear are low as citizens are free to form associations, demonstrate in public places and receive and impart information without restrictions in law or practice.
Narrow	1-2	While the state allows individuals and civil society organisations to exercise their rights to freedom of association, peaceful assembly and expression, violations of these rights also take place.
Obstructed	2-3	The civic space is heavily contested by power holders, who impose a combination of legal and practical constraints on the full enjoyment of fundamental rights. Although civil society organisations exist, state authorities undermine them.
Repressed	3-4	The civic space is heavily constrained. Active individuals and civil society members who criticise power holders risk surveillance, harassment, intimidation, imprisonment, injury and death.
Closed	4-5	There is complete closure – in law and in practice – of civic space. An atmosphere of fear and violence prevails, any criticism of the ruling authorities is severely punished, and there is no media freedom.

Beyond tracking laws that affect CSOs, we were also interested in finding out how CSOs are responding to the threat of shrinking space. We analysed news articles, materials on social movements' websites, social media

posts, campaigns, lawsuits, seminars, reports from dialogues, reviews and other commentaries. We have been tracking protests across Africa using the [Africa Citizenship Index](#).

2

REGIONAL
AVERAGE
SCORE

Ease of registration

3

The Southern African region is characterised by disparate and inconsistent legislation governing the formalisation of citizen-established organisations/associations. The most prevalent method of formalisation has for a long time been through the Deed of Trust. Governments within the region, however, are developing new requirements for registration and annual compliance procedures. The Trust Deed is a legal document which contains the terms and conditions under which the Trust will operate. The process of developing and registering a Trust Deed requires the services of a registered Notary Public (Murisa & Nobela, 2022).

In Angola, CSOs must register under Law 14/91 on associations before embarking on any activities and the registration process is outlined in Decree 84/02. CSOs must register by submitting a request for a license to operate attached with the necessary documentation to the Ministry of Justice and Human Rights. Following clearance from the government, CSOs must register with the Institute for the Promotion and Coordination of Community Aid (IPROCAC) and provincial authorities in the regions which they will operate. The introduction of the government's internet public services portal in 2018 eased the registration of new groups. Nevertheless, the government's online public services portal, launched in 2018 so as to make it easier to register new groups, remains onerous in practise (United States Agency for International

Development, 2022). The Ministry of Justice and Human Rights takes a long time to complete applications for some groups, particularly those concerned with human rights. The registration processes necessitate multiple trips to the ministry particularly because the online portal does not give application updates. Travel to the ministry is especially difficult for organisations outside of Luanda, and the cost of travel might hinder registration. CSOs claim that attempting to reach the ministry by phone is futile. Yet, in 2021, the government foreshadowed a minor improvement in the registration procedure by indicating that in 2022, it may implement a new means of paying registration fees which would cut travel costs for CSOs (USAID, 2022). The Act confers too much discretion on the registration of associations in the Minister and this creates challenges around the process of registration and the denial of registration of entities that are critical of the government. Their conditions tighten the conditions for operating in civic space. The environment, however, is not entirely repressed as the Angolan administration has several incentives towards CSOs, such as, all registered CSOs are eligible for exemptions from income tax and importation duty on.

According to the Non-Governmental Organisations (NGO) Board in Malawi, by the end of the year 2021, there was a total of 866 registered CSOs. The Malawi NGO Board states that 40% of these groups did not exist, and only 175 adhered to the requirement

of submitting yearly reports. The real number of CSOs in Malawi is more than what is officially recorded because many organisations do not register due to lack of money and time-consuming registration procedures (USAID, 2022). The report further reveals that the requirement to register with several agencies, as well as the high fees connected with registration and audit reports were among the major impediments to registration in the year 2021. However, it is crucial to note that the NGO Board permits CSOs to pay registration costs in instalments so as to ease the financial strain on groups with limited resources.

In Mozambique, officials are considered to have broad discretion in using their authority. Some municipal officials urge that CSOs renew their registration on a regular basis even though this is not required by law (CIVICUS, 2017). Article 52 of the Mozambican Constitution of 2004 provides the freedom to form organisations. Furthermore, article 22 of the International Covenant on Civil and Political Rights (ICCPR) which Mozambique is a signatory, also provides freedom of association. CIVICUS (2017) extends that the major legislative document governing the creation of civil society in Mozambique is Law 8/91 of July 18, 1991. However, burdensome restrictions for the registration of organisations continue to limit freedom of association.

In Tanzania, legislation has been altered by the NGO Act (Amendments) Regulations of 2018, and the Written Laws (Miscellaneous Amendments) No. 3 Bill of 2019. As maintained by a Freedom House study, Tanzania is partly free (Musila, 2019). However, Amnesty International (2019) has condemned state planned changes

to the NGO Act, affirming that its provisions give the Registrar of NGOs vast and unlimited jurisdiction to dissolve organisations and investigate their activities. The rule would also oblige these organisations, which include community-based and self-help groups, to publish their yearly audited financial statements in mainstream media, imposing a financial strain that might ruin grassroots organisations (Kelly, 2019).

In Zambia, the NGO Act of 2009 requires re-registration of trusts after a period of five years, limiting the natural continuity of existence of non-state organisations. However, the most recent Companies Act (2017) imposes fewer limitations on NGOs since it allows charity companies to be registered. It establishes corporate tax regulations for non-profit organisations. In 2020, CSOs in Zambia continued to register with the Registrar of Societies in accordance with the Societies Act or, less frequently, with the Patents and Companies Registration Agency in accordance with the Companies Act. Some CSOs blindly registered under the 2009 Non-governmental Organisations (NGO) Act which was set to be abolished and replaced by an entirely new statute in 2020 (USAID, 2022).

In Zimbabwe, the government is in the process of finalising the promulgation of the PVO Bill into law. In November 2021, the government of Zimbabwe developed the PVO Bill (2021) as part of an attempt to respond to the challenge of regulating the movement of funds and respond to the threats of money laundering and funding acts of terror. The Bill has so far gone through all the required readings in the lower and upper house. If the Bill is signed into law, operating an

organisation without registration will be considered illegal. A study carried out by [Murisa et al \(2022\)](#) found that most CSOs in Zimbabwe are registered as Trusts because the Private Voluntary Organisation (PVO) route has historically been regarded as tedious and difficult to complete. According to [Murisa and Nobela \(2022\)](#), in its current form, the PVO Bill jeopardises the autonomy and operations of non-profit organisations. If passed, every registered Trust in Zimbabwe runs the risk of losing its legal identity and to become an illegal body unless and until it is registered as a PVO in accordance

with the PVO Act. Through a signed statement, Trusts that are registered with the High Court but not registered as PVOs would be forbidden from soliciting and accepting any donations from internal and external parties. If passed, the government will have limitless authority to deregister and persecute PVOs whose focus areas are considered anti-government. This will be a breach to the basic right to freedom of association but also weakens the essential function that PVOs serve in a free democracy ([RFK Human Rights, 2022](#)).

TEXT BOX 1 - 1 | Case Study of the Zimbabwe PVO Bill

An examination of the Bill reveals that, instead of following the Financial Action Task Force’s (FATF) recommendations, the government may be using it as a pretext to crack down on Zimbabwe’s civil society and to infringe on provision in the Constitution such as rights to association, privacy and expression. The law would effectively criminalise CSOs working in Zimbabwe by proposing heavy penalties, including up to a year in prison for alleged NGO registration framework violations, a new requirement that the Bill aims to impose. The Welfare Organisations Act (1967) governs the functioning of CSOs. During the colonial era, legislation was enacted to regulate the movement and distribution of information by organisations suspected of being associated with the liberation movement (Gumbo, 2020). Most CSOs continue to register as trusts with the Registrar of Deeds Office, which is a straightforward but costly process. In 2020, the registrar hampered registration by stalling applicants and collecting registration fees at high costs. Some organisations formalise as *universitas*, which function under the formal legal common-law basis that an organisation exists once it has a constitution. Several bigger groups, such as the Zimbabwe Human Rights NGO Forum and the Catholic Commission for Justice and Peace, function as *universitas*.

TABLE 3 | Ease of Registration

Country	Score	Relevant Laws/Policies
Angola	4	<u>Decree No. 84/02</u>
Botswana	1	<u>Societies Act (1972)</u>
Eswatini	4	<u>Companies Act (2009)</u>
Lesotho	4	<u>Societies Act (1966)</u> <u>Cooperative Societies Act</u>
Madagascar	2	<u>NGO Act (1997)</u>
Malawi	4	<u>NGO Act (2001)</u> <u>NGO Amendment Bill 2022</u> <u>Companies Act 2013</u>
Mozambique	4	<u>Law of Association, Decree 55/98 (1998)</u>
Namibia	3	<u>NPO Act 1997</u> <u>Trust Moneys Protection Act 1934</u> <u>Companies Act 28 2004</u>
South Africa	2	<u>Non-Profit Organisations Act No.71 (1997)</u>
Tanzania	4	<u>NGO Act (2002)</u> <u>Written Laws (Miscellaneous Amendments No.3) 2019</u>
Zambia	4	<u>NGO Act (2009)</u> <u>Land (Perpetual Succession) Act</u> <u>Companies Act 2017</u>
Zimbabwe	4	<u>Private Voluntary Organization (PVO) Amendment Bill (2021)</u> <u>Interception of Communication Act 2007</u> <u>Unlawful Organisations Act 1971</u>

3

Ease of fundraising from external sources

REGIONAL
AVERAGE
SCORE

2

The European Emergency Number Association sees access to resources as a significant motivating element for CSOs, as most CSOs cannot operate without them (CIVICUS, 2017). The assessments according to CIVICUS (2017) presents a picture of CSOs facing an ongoing fight for resources, particularly because of civil society constraints that make it more difficult to get funding as well as shifting donor priorities. In countries such as South Africa and Zambia, CSOs claim that financing for civil society is diminishing.

In Botswana, the legal conditions for CSOs improved marginally in 2021 with the implementation of a

computerised registration system. According to the [2021 Civil Society Organization Sustainability Index](#), CSOs may seek funding from international, corporate and individual contributors. CSOs receiving funds from both foreign and local donors must report their revenue to the Botswana Unified Revenue Service and adhere to international agreements implemented by Botswana to combat money laundering and financing of terrorism. However, some CSOs are not comfortable with the requirement to reveal their sources of funding because some donors are unwilling to have their identities exposed.

“ CSOs receiving funds from both foreign and local donors must report their revenue to the Botswana Union Revenue Service



In the case of Zimbabwe, the [Zimbabwe Lawyers for Human Rights \(ZLHR\) report](#) that the promotion of civic education, accountability and social change is frequently regarded as a challenge to the political status quo, and this has led to official measures to shrink civic space (2021). The Zimbabwean state has responded to civil society's concerns by periodically cracking down on NGOs, particularly, those focusing on civil and political rights and those receiving foreign money for human rights and democracy programmes (ZLHR, 2021). However, assessments of various kinds of criminalisation of NGO financing reveal that authorities in many countries use the consensus around combating terrorism and money laundering to make it difficult for civil society organisations to raise funds, especially from external sources. Nevertheless, this could be an attempt by many state administrations to normalise their authoritarian grip on the civic space. The Zimbabwe PVO Bill of November

2021 seeks to monitor the accounts of every Trust that conducts internal and external fundraising to comply with the Financial Action Task Force guidelines concerning money laundering, as well as to improve the efficiency of voluntary organisation regulation and to prevent organisations from engaging in political lobbying. According to [Mataruse and Matthews \(2022\)](#), data from the Organisation for Economic Co-operation and Development Creditor Reporting System (OECD CRS) and AidData show considerable sums of foreign aid pouring into Zimbabwe, including cash for democracy support. However, since opposition political parties are prohibited from obtaining donor money, there are suspicions that foreign financial assistance for opposition politics is being channelled through civil society organisations (CSOs). Similarly, other SADC countries are inundated by laws which affect the ease of fundraising from external sources. This is comprehensively illustrated in Table 4 below:

TABLE 4 | Laws Affecting the Ease of Fundraising from External Sources

Country	Score	Relevant Laws/Policies
Angola	2	Presidential Decree No. 74/15 2015
Botswana	2	NGO Policy 2001
South Africa	2	Financial Intelligence Centre Amendment Act No. 1 2017
Tanzania	2	NGO Act Amendment Regulations 2018
Zambia	4	NGO Act (2009)
Zimbabwe	4	Money Laundering Proceeds of Crime Act 2016 Private Voluntary Organisation (PVO) Amendment Bill (2021)

Ease of moving funds

2

The legal framework for money transfers and movement can be identified as lenient towards CSOs across the countries under study. To begin with, in June of 2010, Angola made a high-level political commitment to engage with the Financial Action Task Force (FATF) to solve its strategic Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) weaknesses. This report highlights the moves that were taken to improve Angola's AML/CFT regime since October 2011, including the adoption of a new AML/CFT legislation ([Anti Money Laundering Forum, 2012](#)). The key statute that provides the legal basis for AML/CFT in the Republic of Angola is [Law 34/11](#). The law criminalises money laundering and terrorist financing allowing for the seizure of illicit profits and stipulates preventative measures applicable to responsible institutions (referred to as subject organisations) and their AML/CFT requirements. One other legal instrument that governs the movement of funds in Angola in a bid to combat money laundering is the [Law No. 5/20](#). Under the provisions of Subsection IV – Section I, Chapter II, in accordance to [Article 2 of Law No. 5/20](#), NGOs are identified as like entities. The [Capital Finance International \(2017\)](#) reports that, the National Bank of Angola (BNA) has successfully implemented a series of new legislation which emphasises policy improvements, establishes training materials and instructions for BNA-regulated institutions, maintains financial system monitoring and penalises violating institutions

which fail to comply with the BNA's codes of conduct. Any suspicious transactions will be reported to the Financial Intelligence Unit which has the authority to freeze the funds of individuals or organisations suspected of engaging in fraudulent operations. The Eastern and Southern Africa Anti-Money Laundering Group ([Eastern and Southern Africa Anti-Money Laundering Group-ESAAMLG, 2018](#)) denotes that from November 7 to 21 2011, the World Bank assessed Angola's AML/CFT system. ESAAMLG submitted the first Round Mutual Evaluations - Post Evaluation Progress Report of Angola in 2018. The report outlines the Republic of Angola's AML/CFT framework and the Government of the Republic of Angola's commitment to establishing a well-developed AML/CFT system in accordance with FATF criteria ([FATF, 2012](#)).

Botswana's ranking for moving funds is generally placed within the narrow category because its NGO policy of 2001 requires NGOs to answer to the state for any funds received and to keep the state fully informed of their resources and their source. However, our research finds that the demand for full disclosure of NGO financing is arbitrary and tends to meddle with the private information of the organisation and indicates state micromanagement. A variety of statutes govern the movement of funds in Botswana. This applies to people, businesses, and most significantly, non-profit organisations. The Counter Terrorism Act of 2014, for example, was intended

to establish the source of every money which flows into Botswana so as to prevent organisations from utilising funds from terrorist entities (RoB, Botswana Anti-Terrorism Act, 2014). Botswana's latest Financial Intelligence Act (2022) was enacted to combat money laundering in the country following a period of grey listing by the Financial Action Task Force (FATF) (Mokwape, 2019). The Act ideally requires all organisations to report the movement of funds inside and outside the country's borders. The effect of this legislature is that it affects monetary donations to and from voluntary

organisations by delaying the transit of money while it is being inspected.

In Malawi, the movement of funds is governed by the Exchange Control Act cap 45.01 of Malawi Laws of 1989. This law was passed in order to restrict and regulate the movement and ownership of foreign currencies. The Act empowers the Minister to issue regulations to manage foreign exchange, bullion and Malawi currency. Leman et al (2023) highlights that moving money within Malawi is cheap but moving money across its borders is costly. This has a huge potential



to impact the implementation of philanthropic initiatives by numerous parties. A study of similar scope was carried out in Eswatini and highlighted the impact of the Money Laundering and Financing of Terrorism (Prevention) Act, 2011. The Act ideally attempts

to criminalise money laundering and combat terrorism funding by establishing a financial intelligence unit, providing for the seizure of ill-gotten property and other related restrictive measures. Another legal instrument which affects the movement of funds

in Malawi is the [National Clearing and Settlement Systems Act of 2011](#). This Act guarantees the recognition, operation and supervision of systems for the clearing of transfer instructions between financial institutions, as well as other issues related to the movement of money. Additional and significant legislation in the SADC region includes the Swaziland [Financial Institutions Act 6 of 2005](#), the [National Clearing and Settlement Systems \(NCSS\) Act of 2011](#), the Swaziland [Interbank Payment and Settlement System \(SWIPSS\)](#), and Swaziland Laws.

In Namibia the majority of CSOs rely on foreign financial support. There are a few legislative restrictions on the transfer of funds inside the country. Funds from outside the Namibian borders are however, only payable when the organisation's relevant domestic financial institution has converted the money to Namibian dollars and levied a transfer payment fee. There is one significant major limitation on the movement of funds from outside Namibia. The Namibian [Exchange Control Act \(1966\)](#) postulates that "Exchange control approval is required for all transactions by Namibian residents (whether natural or juristic persons) which involve the transfer of assets to countries outside the Common Monetary Area. The Common Monetary Area comprises Namibia, Lesotho, South Africa, and Swaziland." The Bank of Namibia has the sole authority to approve exchange controls. This restriction applies to any amount of money transferred to Namibia. Acceptance of loan money from outside by a local entity, usually for a minimum of six months, is subject to Exchange Control permission. Hence, this approval process can limit an organisation's rate of funds movement if they are

tied up in bureaucratic processing.

The Financial Action Task Force (FATF) which was set up to monitor and uphold standards aimed at preventing illicit actions, grey listed Zimbabwe for failing to put proper security measures in place to combat money laundering and terrorism funding ([Mugwagwa, 2022](#)). To preserve foreign currency, the Zimbabwean government imposed stringent restrictions on the transfer of funds outside the country and this is regulated through the [Exchange Control Act Chapter \(22:05\)](#). The [PVO Bill of 2021](#) presents arbitrary limitations on PVOs' access to financing, particularly funds from outside the border. [Murisa and Nobela \(2022\)](#) highlight that every foundation that engages in internal and external fundraising will have the government audit its books and accounts, thus posing a threat to its autonomy. Clause 2 of the Bill indicates that A section allowing the Registrar to prevent trusts registered with the High Court but not registered as PVOs from soliciting donations from the general public or from outside of Zimbabwean borders for any of the purposes listed in the definition of "private voluntary organisation" ([The Private Voluntary Organisations Amendment Bill, 2021](#)). According to [CIVICUS \(2022\)](#), the [PVO Bill of 2021](#) contradicts the FATF's balanced approach, which states that an enabling operational environment must be maintained to meet FATF criteria. CIVICUS's assessment maintains that the new law causes greater government meddling in the activities of CSOs and reduces the CSOs' eligibility for financing. Like Zimbabwe, Madagascar has put in place measures against money-laundering through the government approved Anti-Money Laundering and Countering the Financing of



Terrorism (AML/CFT) Legislation n°2018-043 which was enacted on the 13th of February 2019 (ESAAMLG, 2020). However, according to the 2018 Mutual Evaluation Report, the Council of Ministers' participation in the financial Intelligence Unit's (SAMIFIN) hiring procedure raises concerns about the timing of appointments and their competence in identifying the required skill. The

report also captures that, there is little to no awareness with regards to the identification of illicit money flows in both the financial and non-financial sectors which raises concerns of the effectiveness of the measures provided by the legal instrument. Attempts to combat money laundering in the SADC region, may delay the transfer of funds through filtering bureaucracies/verification systems.

TABLE 5 | Laws Affecting the Ease of Moving Funds Across the Region

Country	Score	Relevant Laws/Policies
Angola	4	<u>Presidential Decree No. 74/15 2015</u> Law 34/11
Botswana	2	<u>NGO Policy 2001</u>
Malawi	2	<u>NGO Fees Regulation 2018</u>
Namibia	2	<u>Combating and Prevention of Terrorist Activities Act 2012</u>
South Africa	2	<u>Financial Intelligence Centre Amendment Act No.1 2017</u>
Tanzania	2	<u>NGO Act Amendment Regulations 2018</u>
Zimbabwe	4	<u>SI 33 of 2019</u>

5

REGIONAL
AVERAGE
SCORE

Freedom of expression

4

The media plays an important role in shaping public opinion, contributing towards shaping the national discourse and as a conduit of information on what governments are up to while also amplifying the voices and expectations of citizens. Since the turn of the century, the scope of the media has increased to include non-institutional forms of information gathering and dissemination. There is more information disseminated through social media platforms such as Facebook, Twitter, Instagram and WhatsApp. Regulations to control the use of these new forms of media is also on the increase.

In Mozambique, CSOs operate under some of the most restricted and hazardous conditions (Musila 2019). Between the years 2010 and 2017, several NGO leaders have been harassed, jailed, kidnapped or assassinated (Musila, 2019). In 2015, Gilles Cistac, a distinguished constitutional lawyer, was fatally shot in broad daylight in the Mozambican capital. Cistac was accused of, interpreting the constitution in support of the major opposition group RENAMO, which took up arms after the controversial election of 2014 (Anderson et al, 2021). Article 19 (1) of the Freedom of Expression and of the Press states that “whoever, by any means, discloses information classified under this Law, shall be punished with imprisonment from 12-16 years.” Many news outlets in Mozambique are in some way, controlled by the state or members

of the ruling Frelimo party, limiting their freedom of expression (Global Voices Lusofonia, 2022). This report highlights that while the constitution, media legislation and the right to knowledge are designed to ensure journalists’ liberty, the reality is quite different. As the state leans toward authoritarianism and state-sponsored propaganda, the legislation concerning the Freedom of expression and of the Press is being badly implemented. Pereira and Forquilha (2020) point to the historical framework of civic space in Mozambique. In a report titled *Navigating Civic Spaces in Mozambique*, the authors argue that the party-state has severely restricted people and organisations’ freedom of expression and engagement. Civil society activity was moulded by the autocratic culture passed down from the colonial era. Frelimo has always pushed to abolish or limit freedom of expression and forms of social or political engagement in the country. This colonial-era tactic extensively followed during the one-party system when the party-state acted as a pioneer over political or social groups. This party-state facilitated groups such as party cells and committees, the People’s Assemblies and Production Councils (which later changed into unions). Amnesty International (2022) rightly point to how activity in the Mozambican public arena was limited by the government. Activists’ civic rights, particularly the right to peaceful assembly, have frequently been violated by the police. In June 2021, state authorities barred the Center

for Democracy and Development's activists from presenting a list of their grievances to the Administrative Tribunal. In September of the same year, police in Nampula province assaulted and unjustly detained six journalists for reporting a peaceful demonstration against the government's failure to pay Covid-19 subsidies (Amnesty International, 2022). Article 19 of the International Covenant on Civil and Political Rights guarantees freedom of expression and perception. Furthermore, Article 48 (1) of Mozambique's 2004 Constitution guarantees freedom of expression, freedom of the press, and the right to information. However, there are several disconcerting qualifiers to these clauses which serve to overhaul fundamental rights (CIVICUS, 2017). Tsadzana (2023) reports that the drafts of a new media legislation and a new broadcasting law were considered

for the first time in the Mozambican Parliament on March 22, 2021. However, the examples provided so far testify to how freedom of expression has not been easily achievable in the Southern African region.

Tanzania has also seen its fair share of restrictive laws which are aimed at limiting the physical and virtual operations of CSOs in the country. Godfrey Musila (2019) observes that a coalition of 65 African NGOs condemned the passage of several laws that severely restrict civil liberties, including a \$900 annual license fee for bloggers and operators of online television outlets which was passed under the Electronic and Postal Communications (Online Content) Regulations of 2018. The Cybercrimes Act of 2015 similarly establishes harsh penalties on social media users who post fabricated

TEXT BOX 1 - 2

Zambia's Test on Freedom of Expression- The Chifire Case

In 2018, accusations were made against Gregory Chifire in response to an article he authored in the aftermath of a March 2018 judgement on a case in which Stanbic Bank (the largest bank in Zambia), reported a credit bureau for blacklisting. The situation has not improved drastically as the Gregory Chifire Appeal No.47 of 2018 exposed sentiments of restriction under the current NGO Act in the country. The judgement reversed a lower court decision that had awarded Savenda, a credit bureau, USD \$20 million in damages. On May 9, in an article published in The Zambian Eye, an online news site, Godfrey Chifire criticized this verdict claiming that the arbitrators in the case between the two firms did not abide by the law, and Godfrey Chifire indirectly challenged whether there had been any type of corruption implicated (Front Line Defenders, 2018).

On 23 November 2018, the Supreme Court of Zambia sentenced anti-corruption campaigner Gregory Chifire to six years imprisonment on contempt of court charges. The human rights defender had called for an investigation into potential judicial corruption involving the largest bank in the country and it is believed Chifire was targeted because of this. In March of the following year, the President signed the Cyber Crimes and Cyber Security Act into law. The law was heavily criticised for including clauses that could be used to target government critics consequently restricting free expression and facilitating online police (Amnesty International, 2022).

or misleading content with the intent of slandering, hazardous, berating, or misleading the public.

In Zambia, the Gregory Chifire case puts to the test the existence of freedom of expression (see Text Box 1-2 above).

Table 6 below highlights specific laws that are hindering the achievement of freedom of expression across the 12 African countries under study. The table depicts a repressed civic space and freedom of expression in countries such as Angola, Botswana, Eswatini, Lesotho, Malawi, Mozambique, Tanzania and Zimbabwe. In Angola for example, the Press Law (*Lei de Imprensa No. 22/01*) makes it a crime to publish material which is considered harmful to the state. The Act makes prosecution a requirement for violating its terms. Punishment includes a year-long suspension of any entity that makes such a publication, criminal prosecution and payment of penalties. This is similar to the situation in the Kingdom of Eswatini where there has been a suppression of free speech and criticism to the monarchy. The *Proscribed Publications Act 1968* provides for the ban of entities that publish content which is deemed to be prejudicial to the crown. It punishes the publication of material critical of the monarchy. In a similar manner, Zimbabwe's, Maintenance of Peace and Order Act (MOPA) of 2019 which replaced the Public Order and Security Act (POSA) prohibits constitutionally guaranteed rights of assembly and speech (*International Center for Not-for-Profit Law, 2019*). Although it repeals POSA, MOPA preserves many of the primary characteristics of POSA and it is used to identify and

prosecute acts of state criticism as well as to deny organisations permission to gather if the state judges such actions to be contrary to public interest. One other law which has restricted civic space activities in Zimbabwe is the *Data Protection Act* which was enacted in 2021 and whose objective is to strengthen data protection to instil confidence and trust in data (*Media Institute of Southern Africa, 2021*). The Postal and Telecommunications Regulatory Authority (POTRAZ) is designated through this Act, as the Data Protection Authority. The appointment of POTRAZ was criticised through stakeholder comments and public hearings for creating a super administrative body as POTRAZ is also the telecommunications sector regulator. According to *MISA (2021)*, the Cybersecurity and Monitoring of Interception of Communications Centre is another organisation which was created by this law. This centre is being formed by repealing sections in the Interception of Communications Act and refurbishing what was formerly the Monitoring Centre by exclusively vesting it with Cybersecurity tasks. MISA Zimbabwe is of the view that these measures plainly show that the state is acting under the misguided assumption that cybersecurity is equivalent to national security. Cybersecurity concerns everyone who uses the internet, especially since the entire world is operating within a digital age. One might also argue that the provisions of this act pose a threat to the civic space in Zimbabwe because this Centre will be based in the Office of the President. These are some of the legal provisions that continue to violate fundamental rights in Zimbabwe (*MISA, 2021*).

TABLE 6

Laws Affecting the Freedom of Expression in the Countries under Study

Country	Score	Relevant Laws/Policies
Angola	4	<p>Law of Association (1991)</p> <p><u>Press Law (Lei de Imprensa No. 22/01)</u></p> <p>Decree No. 16A/95</p> <p>Law No. 2/93 Lei de Defesa Nacional</p>
Botswana	4	<p><u>Freedom of Information Bill 2010</u></p>
Eswatini	4	<p><u>Proscribed Publications Act 1968</u></p> <p><u>Official Secrets Act of 1968</u></p> <p><u>Industrial Relations Act</u></p>
Lesotho	4	<p><u>Societies Act (1966)</u></p> <p><u>Internal Security (General) Act No.24 1984</u></p>
Malawi	4	<p><u>NGO Act (2001)</u></p>
Mozambique	4	<p><u>Social Communication Law (2020)</u></p>
Namibia	2	<p><u>Cybercrime Bill 2019</u></p> <p><u>Access to Information Bill 4/2020</u></p>
South Africa	2	<p><u>Internal Security Act 74 1982</u></p> <p><u>Abolition of Restrictions on Free Political Activity Act 1993 Law</u></p> <p><u>Cyber Crimes Act 2021</u></p>
Tanzania	4	<p><u>Cyber Crimes Act 2015</u></p> <p><u>Electronic and Postal Communications (Online Content) Regulations 2018</u></p>
Zimbabwe	4	<p><u>Public Order and Security Act</u></p> <p><u>Maintenance of Peace and Order Act 2019</u></p> <p><u>Data Protection Act 2021</u></p> <p><u>Interception of Communication Act 2007</u></p> <p><u>Censorship and Entertainments Control Act 1967</u></p>

6

REGIONAL
AVERAGE
SCORE

Freedom of assembly

4

Freedom of assembly and freedom of association are inextricably linked and cannot be discussed outside of each other. The right to associate, create groups and organisations for a shared goal lays the foundation for the freedom to assemble ([Legal Resources Centre, 2021](#)). The [Regulations of Gatherings Act 25 of 1993 \(the RGA\)](#) was one of South Africa's key domestic legislations governing the exercise of the freedom to protest. The Act gives effect to the constitutional right to freedom of assembly and requires organisers of any gathering to notify Town councils of their desire to have a meeting prior to a Court decision. Failure to do so constitutes a criminal offence for the organiser(s). The Social Justice Coalition (SJC), a civil society movement, contested the validity of the RGA's notification requirements. The SJC's contestation was based on the grounds that the notification clause discouraged the exercise of the right to assemble. Similar restrictions have been observed in other jurisdiction such as Angola where the police

prevented a civil society event on peacebuilding from taking place. The Angolan government issued a new legislation governing the registration of non-governmental organisations (NGOs), Presidential Decree 74/15 of March 23, 2015 ([Amnesty International, 2016](#)). Although there is no requirement to apply to carry out protests by law, authorities regularly refuse to allow them to take place. When protests did occur, police frequently and unjustly arrested and imprisoned nonviolent people. [CIVICUS \(2022\)](#) attest that police barred two CSOs, OMUNGA and Associação para Desenvolvimento da Culture e Direitos Humanos (ADCDH), from convening a peacebuilding conference in Cabinda on May 21 of 2022. They did this by obstructing the entry to the hotel where the event was to be held. Police personnel confirmed that they were only carrying out orders from a higher office ([CIVICUS, 2022](#)). Table 7 below provides a view of the laws affecting freedoms of assembly and association within the SADC region.



TABLE 7 Laws Affecting the Freedom of Assembly in the Region

Country	Score	Relevant Laws/Policies
Angola	4	<p><u>Law of Association (1991)</u></p> <p><u>Presidential Decree No. 74/15 2015</u></p>
Eswatini	4	<p><u>Sedition and Subversive Activities Act 1934</u></p> <p><u>Public Order Act 2017</u></p> <p><u>Industrial Relations Act (No. 1 of 2000)</u></p>
Lesotho	4	<p><u>Internal Security (General) Act No.24 1984</u></p>
Malawi	4	<p><u>Police Act 2014</u></p>
South Africa	4	<p><u>Abolition of Restrictions on Free Political Activity Act 1993 Law</u></p> <p><u>Internal Security Act 74 1982</u></p>
Zimbabwe	4	<p><u>Private Voluntary Organisation (PVO) Amendment Bill (2021)</u></p> <p><u>Maintenance of Peace and Order Act 2019</u></p> <p><u>Censorship and Entertainments Control Act 1967</u></p>

Presence of laws that affect CSOs

TABLE 8 All Laws Affecting CSOs Identified in the Study

Country	Score	Relevant Laws/Policies
Angola	4	<p>Law of Association (1991)</p> <p>Presidential Decree No. 74/15 2015</p> <p>Press Law (Lei de Imprensa No. 22/01)</p> <p>Decree No. 84/02</p> <p>Decree No. 16A/95</p> <p>Law No. 2/93 Lei de Defesa Nacional</p>
Botswana	4	<p>Societies Act (1972)</p> <p>Data Protection Act 2018</p> <p>Freedom of Information Bill 2010</p> <p>NGO Policy 2001</p>
Eswatini	4	<p>Companies Act (2009)</p> <p>Sedition and Subversive Activities Act 1934</p> <p>Proscribed Publications Act 1968</p> <p>Official Secrets Act of 1968</p> <p>Public Order Act 2017</p> <p>Suppression of Terrorism Act 2008</p> <p>Industrial Relations Act (No. 1 of 2000)</p>
Lesotho	4	<p>Societies Act (1966)</p> <p>Cooperative Societies Act</p> <p>Internal Security (General) Act No.24 1984</p>
Madagascar	3	<p>NGO Act (1997)</p> <p>Law No. 2014 - 038 on the Protection of Personal Data</p> <p>Communication and Media Law</p> <p>Cyber Crime Law</p> <p>Law No. 2014 - 038 on the Protection of Personal Data (Only available in French)</p>
Malawi	4	<p>NGO Act (2001)</p> <p>NGO Amendment Bill 2022</p> <p>NGO Policy 2019</p> <p>NGO Fees Regulation 2018</p> <p>Police Act 2014</p> <p>Companies Act 2013</p>
Mozambique	4	<p>Law of Association, Decree 55/98 (1998)</p> <p>Social Communication Law (2020)</p>

June 2022		NPO Act 1997
Namibia	2	Trust Moneys Protection Act 1934 Companies Act 28 2004 Cybercrime Bill 2019 Combating and Prevention of Terrorist Activities Act 2012 Access to Information Bill 4/2020
South Africa	4	Non-Profit Organisations Act No.71 (1997) Financial Intelligence Centre Amendment Act No.1 2017 Internal Security Act 74 1982 Abolition of Restrictions on Free Political Activity Act 1993 Law Cyber Crimes Act 2021
Tanzania	4	NGO Act (2002) Written Laws (Miscellaneous Amendments No.3) 2019 Income Tax Act 2019 Cyber Crimes Act 2015 Electronic and Postal Communications (Online Content) Regulations 2018 NGO Act Amendment Regulations 2018
Zambia	4	NGO Act (2009) Companies Act 2017 Land (Perpetual Succession) Act Societies Act of 1952 Savenda Management Services Limited v Stanbic Bank Zambia Limited; Gregory Chifire Appeal No.47 of 2018
Zimbabwe	4	Private Voluntary Organisation (PVO) Amendment Bill (2021) Public Order and Security Act Maintenance of Peace and Order Act 2019 SI 33 of 2019 Data Protection Act 2021 Interception of Communication Act 2007 Censorship and Entertainments Control Act 1967 Money Laundering and Proceeds of Crime Act 2016 Unlawful Organisations Act 1971

Conclusion

The report has identified a total of 63 laws either restricting the work of CSOs or threatening their very existence across all the 12 SADC countries studied. Our investigation showed that the shrinking civic space in the SADC region is mainly due to punitive legal instruments targeted at the operations of CSOs. The greatest concern for these governments and their justification for such punitive measures is the threat of terrorism which, they argue has resulted in the need for new legal structures that address and monitor the flow of funds.

Our analysis of the shrinking of civic space in the SADC region was based on five related thematic areas: Ease of registration; Ease of fundraising from external sources, Ease of movement of funds, Freedom of expression and Freedom of assembly. These areas were rated on a score ranging from 1 to 5 whereby 1 represents an open environment where civic space is enjoyed with no obstruction while 5 represents a severely obstructed civic space. When determining the ease of registration, our study looked at the conditions associated with setting up a CSO across the 12 countries and our study reveals that the SADC region is distinguished by inconsistent legislation governing the formalisation of civic organisations. Apart from the long registration processes, some of the SADC governments have introduced internet public services portals with the intention to make it easier for new groups to register. The prevailing concern across these countries has to do with the ways in which laws that regulate registration grant too much

discretionary authority in the Ministers/ Registrars who do not always make it easy for civic organisations to register. Our study also identified that in some cases the limiting factors have to do with lack of registration funds and lengthy registration procedures.

The movement of funds by CSOs remains one of the biggest concerns by governments in an effort to combat the financing of terrorism and as a result, many SADC governments have put in place restrictive laws for monitoring the flow of funds. While their intention may be noble, the consequence is that civic organisations fail to function meaningfully because donors may not be willing to deal with the infringing regulations. The study generally raises questions on the future of and prospects for civil society freedoms in Southern Africa. This line of questioning is crucial given the emerging trend among countries that were generally regarded as having a free environment for civic engagement have recently produced several measures that potentially curtail freedoms of expressions, association and challenge viability of civil society organisations. There exists an unhealthy standoff between government and CSOs. It is unhealthy for democracy and there is urgent need for a common ground approach in the formulation of new laws.

We propose an alternative framework of regulation, one which is peer driven. The need for a vibrant civil society cannot be overemphasized. The framework of regulation should be driven by values and principles

of fairness, justice, democratic accountability and plurality. It is unfair for politicians to use the law to silence voices demanding accountability.

The text box below provides a summary of the proposed guidelines for a peer regulated civic space.

TEXT BOX 1-3

A Proposal for Peer Regulated AGORA



Vision

To promote citizen centred democratic process that deepen solidarity and inclusive development.



Values Driving the Vision

Broadening Participation - citizen interactions add to democracy. Their activities (amongst themselves and with state agencies) contribute towards sustaining peace, reframing development and inclusion of all.

Solidarity - organic and bottom up mechanisms of care for one another are at the core of our traditional forms of social organisations at times referred to as Ubuntu.

Respect – promote an acknowledgement of the role of other actors that citizens interact with, the state and the market.

Mutual Accountability - an inclusive compact for development emerges when there is recognition of the deep interconnectedness across the existing boundaries between citizens and state.



Legal Frameworks

We have made the choice to be constitution driven societies. Our constitutions already possess capacity to regulate our behaviours.

Regulation- when the need arises for new laws- those in government/ law-making should engage affected communities meaningfully.



Our Commitment

For the greater good of the country’s citizens and the continent.

For a more participatory and citizen driven public space.

To be accountable in terms of where we raise resources- alert to threats of other agendas that may work against country and continent.

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- » Inadequate performance of existing political and economic system
- » Increasing poverty and inequality
- » Limited coherence of policies across sectors
- » Ineffectual participation in public processes by non-state actors
 - » Increased dependence on external resources and limited leveraging of local resources

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