ZIMBABWE LAWYERS FOR HUMAN RIGHTS SUBMISSION PURSUANT TO THE HUMAN RIGHTS COMMITTEE'S CALL FOR COMMENTS ON DRAFT GENERAL COMMENT No. 38 ON ARTICLE 22 (ON THE RIGHT TO FREEDOM OF ASSOCIATION) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

This submission is made by the Zimbabwe Lawyers for Human Rights (ZLHR) pursuant to the United Nations Human Rights Committee's call for comments on Draft General Comment No. 38 on Article 22 of the International Covenant on Civil and Political Rights (ICCPR), concerning the right to freedom of association.

ZLHR notes that the draft General Comment addresses a broad range of issues relevant to the protection of the right to freedom of association. In particular, the draft provides useful clarification on the scope of the right, the permissible restrictions on its exercise, and the obligations of States parties. These are areas that have historically given rise to concern due to their misuse and abuse, including in the context of Zimbabwe.

Drawing on its experience in promoting and protecting human rights and the rule of law, ZLHR provides observations on selected aspects of the Draft General Comment No. 38 that are particularly relevant to the operating environment for civil society organisations, human rights defenders, and other associations in Zimbabwe and the broader Southern African region. Through these comments, ZLHR seeks to contribute to the further refinement of the Draft General Comment, with a view to strengthening the protection and effective enjoyment of the right to freedom of association under Article 22 of the ICCPR globally.

- **Scope of freedom of association (art. 22 (1))**

Paragraph 12 ***:*** The paragraph adequately captures the scope of associations protected under Article 22. However, the Committee should note that the characterisation of associations as "organised" entities may inadvertently invite scrutiny of, or exclude, informal and loosely structured groups that are equally entitled to protection under the Covenant. While ZLHR acknowledges paragraph 13, which recognises the protection afforded to unregistered and de facto associations, the term "organised" may nevertheless be interpreted as

implying a degree of ***"formality", "efficiency", "coordination", "continuity", or "systematic"*** by its very definition.[1] Such an interpretation may not adequately reflect the reality that many individuals today exercise their right to freedom of association through informal networks and other non-traditional forms of association, often in response to restrictions placed on formally constituted organisations. The Zimbabwean experience illustrates the practical stakes of this choice. Under the Private Voluntary Organisations Amendment Act, the responsible Minister may declare any body or association to be vulnerable to misuse, or at high risk of misuse, by terrorist organisations, and thereby compel it to register, while the risk-based supervision regulations adopted in 2026 extend supervision to trusts and other loosely structured bodies according to their funding profile.[2] The very informality that paragraphs 12 and 13 seek to protect is, in such frameworks, treated as a trigger for regulatory capture rather than as a protected form of association.

Recommendation: *The Committee may wish to clarify that the term "organised" entities should not be interpreted as requiring a particular degree of formality, structure, continuity, coordination, or efficiency.*

Paragraph 13: ZLHR welcomes the recognition that unregistered and de facto associations enjoy the protection of Article 22. The Committee may wish to go further and address the increasing practice of criminalising the act of operating without registration. In Zimbabwe, the Private Voluntary Organisations Amendment Act makes it an offence to operate as an unregistered private voluntary organisation and imposes individual criminal and civil liability on trustees, officers, employees and any person involved in the control of such a body.[3] Penalties of this kind deter individuals from forming or serving associations at all, and convert the failure to satisfy an administrative formality into a criminal matter. This sits uneasily with the principle that legal personality should follow from notification rather than operate as a precondition of lawful association.

Recommendation: *The Committee may wish to affirm that the absence of registration cannot itself be a basis for criminal sanction, that registration regimes should function as a system of notification rather than prior authorisation, and that any penalties for non-compliance with administrative requirements should be administrative and proportionate rather than criminal.*

Paragraph 15 : The reference to "A law granting the Government undue power or influence to decide on the registration or deregistration of an association and on authorization of public or foreign funding for an association would be at odds with article 22" should also be understood as extending beyond registration and deregistration to include the "day-to-day operations" of associations as well. In contexts such as

[1] See Cambridge Dictionary, "organized" (defining "organized" as "planned and arranged in a particular way" and "able to plan things carefully and keep things neat"); see also Oxford Learner's Dictionaries, "organized" (defining "organized" as "arranged or planned well" and describing a person who is able to plan work and activities efficiently).

[2] Private Voluntary Organisations Amendment Act (No. 1 of 2025), inserting a new section 22 into the Private Voluntary Organisations Act [Chapter 17:05]; Private Voluntary Organisations (Risk-Based Supervision and Protection from Terrorist Financing Abuse) Regulations, 2026.

[3] Private Voluntary Organisations Amendment Act (No. 1 of 2025), which criminalises operating as an unregistered private voluntary organisation and provides for the individual criminal and civil liability of trustees, officers, employees and persons involved in the control of such an organisation.

Zimbabwe, the recently enacted Private Voluntary Organisations Amendment Act (PVO Amendment Act) illustrates this concern. Beyond imposing a cumbersome registration regime, the law allows for significant governmental interference in the internal functioning of associations operating as PVOs. For example, the Minister may apply to the High Court for an order to suspend an organisation's executive committee and appoint one or more trustees to manage its affairs where it considers this necessary on broadly defined grounds.[4] Crucially, the suspension may take effect before the affected officers are heard, with the confirmation of the court sought only afterwards; the responsible Minister told Parliament that giving prior notice would allow executives to cover their tracks.[5] Powers of this kind show that undue State influence over an association is not confined to registration and funding but extends to the capture of its leadership and its day-to-day governance, which can hollow out an association without it ever being deregistered.

Recommendation: *As such, the Committee may wish to clarify that these protections extend to the operational activities and internal governance of associations, so as to avoid any ambiguity that undue State influence is prohibited only in matters of registration, deregistration, or access to funding. In particular, the Committee may wish to indicate that measures permitting the State to suspend or replace the leadership of an association should require prior judicial authorisation, a fair hearing for those affected, and a demonstration of necessity and proportionality.*

Paragraph 15 (access to resources): ZLHR supports the recognition that undue control over the authorisation of public or foreign funding is incompatible with Article 22. The ability to seek, receive and use resources, including funding from foreign and international sources, is an inherent component of the right to freedom of association, as the mandate holders of the Human Rights Council have consistently affirmed.[6] In Zimbabwe, access to foreign funding has increasingly been treated as a source of suspicion in itself. The risk-based supervision regulations adopted in 2026 grade private voluntary organisations as high, medium or low risk largely according to their exposure to foreign funding, with the effect that internationally funded human rights work is presumptively cast as high risk.[7] Treating the source of an association's funding as a proxy for wrongdoing penalises legitimate activity and discourages the cross-border solidarity on which much human rights work depends.

Recommendation: *The Committee may wish to affirm that access to resources, including foreign and international funding, forms part of the right protected by Article 22, that any restriction on such access must satisfy the tests of legality, necessity and proportionality, and that the foreign origin of funding is not, in itself, a legitimate ground for restriction.*

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[4] Private Voluntary Organisations Amendment Act, Section 21.

[5] Private Voluntary Organisations Amendment Act (No. 1 of 2025), replacing section 21 of the Private Voluntary Organisations Act [Chapter 17:05]; Committee Stage debate on the Private Voluntary Organisations Amendment Bill, National Assembly of Zimbabwe, 2024.

[6] See the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on the ability of associations to access financial resources, UN Doc A/HRC/23/39 (2013).

[7] Private Voluntary Organisations (Risk-Based Supervision and Protection from Terrorist Financing Abuse) Regulations, 2026.

Paragraph 17: With respect to the economic activities of associations, the Committee may wish to emphasise that States should not misuse anti-money laundering and countering the financing of terrorism (AML/CFT) frameworks to impose undue restrictions on the economic activities of associations. In particular, the Committee should take note of the frequent reliance on the Financial Action Task Force (FATF) Recommendation 8, which requires States to protect non-profit organizsations from terrorist financing abuse.[8] While this objective is legitimate, measures adopted pursuant to Recommendation 8 should be based on a demonstrable risk assessment and comply with the principles of necessity and proportionality. Restrictions imposed in the absence of a risk-based and proportionate approach risk unduly interfering with article 22. The experience of Zimbabwe is instructive. Zimbabwe's own National Risk Assessment of 2019 did not identify the non-profit sector as a high-threat sector for money laundering or terrorist financing; the sectors identified as posing the highest threat were banking, real estate, motor vehicle dealers, mining and mobile money.[9] Zimbabwe was removed from the FATF list of jurisdictions under increased monitoring in March 2022.[10] Notwithstanding both of these facts, the State has continued to expand controls over associations in the name of Recommendation 8, most recently through the risk-based supervision regulations adopted in 2026, which classify organisations by reference to their exposure to foreign funding rather than to any evidenced risk of terrorist financing abuse. This inverts the logic of Recommendation 8, which the FATF itself has revised, following its Unintended Consequences project, to stress that measures must be targeted, risk-based and proportionate and that not all non-profit organisations are at risk.[11] The Special Rapporteur on the rights to freedom of peaceful assembly and of association has identified Zimbabwe among the States that have transposed the language of Recommendation 8 into domestic law in a manner that curtails civic space.[12]

Recommendation: *The Committee may wish to expressly emphasise that restrictions imposed under AML/CFT frameworks, including those adopted pursuant to FATF Recommendations, particularly Recommendation 8, must be risk-based, necessary, and proportionate, and must not unduly interfere with the rights protected under article 22. The Committee may further wish to make clear that compliance with FATF standards does not, in itself, satisfy the requirements of Article 22, that any measure must rest on a genuine and evidence-based sectoral risk assessment which identifies the specific subset of organisations actually at risk, and that the foreign origin of an association's funding is not a proxy for terrorist financing risk.*

- **States Parties' negative and positive obligations**

[8] Financial Action Task Force (FATF) Recommendation 8.

[9] Government of Zimbabwe, National Risk Assessment on Money Laundering and Terrorist Financing (2019), which identified banking, real estate, motor vehicle dealers, the mining sector and mobile money as the highest-threat sectors.

[10] FATF, Jurisdictions under Increased Monitoring, March 2022, recording the removal of Zimbabwe from the list.

[11] FATF, International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, Recommendation 8 (Non-Profit Organisations), as revised in November 2023, following the FATF Unintended Consequences project initiated in 2021.

[12] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule.

Paragraph 40: The Committee may also wish to consider and highlight that, where associations have been wrongly portrayed by public authorities as “regime change agents”, "financing terrorism” or subjected to other defamatory statements that undermine their reputation, legitimacy, or ability to operate effectively, including their capacity to raise funds and engage with members, citizens, partners, and donors, an effective remedy may require public retractions, corrections, or other measures aimed at restoring their good name and standing. Such measures may be necessary, in addition to compensation and guarantees of non-repetition, to fully remedy the harm caused by the violation. In Zimbabwe, the characterisation of civil society organisations and human rights defenders as regime change agents or as fronts for foreign interests has been a recurring feature of official discourse, and it now carries legal consequences. The Private Voluntary Organisations Amendment Act prohibits private voluntary organisations from conducting themselves in a politically partisan manner and creates a criminal offence for supporting or opposing a political party or candidate, which lends the rhetoric the force of law and treats ordinary rights work as illegitimate political interference.[13] Labelling of this kind has a documented chilling effect and exposes defenders to harassment and reprisal. The positive obligations of States under Article 22 should therefore be understood to include a duty to refrain from stigmatising associations and to protect human rights defenders from such stigmatisation, consistent with the Declaration on Human Rights Defenders.[14]

Recommendation: *The Committee may wish to specify that, where public authorities have stigmatised an association through labels such as regime change agents or financiers of terrorism, an effective remedy includes a public retraction or correction by the responsible authority, alongside compensation, cessation, and guarantees of non-repetition.*

/ENDS/

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[13] Private Voluntary Organisations Amendment Act (No. 1 of 2025), which prohibits politically partisan conduct by private voluntary organisations and creates a related criminal offence.
[14] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN General Assembly resolution 53/144 (1998).