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The Southern African Liaison Office (NPC)

Regus - Black River Park  
1st Floor, Block B, North Park, Black River Park  
2 Fir Street, Observatory, Cape Town, 7925

Email: [info@salo.org.za](mailto:info@salo.org.za)  
[www.salo.org.za](http://www.salo.org.za)  
@salo\_info

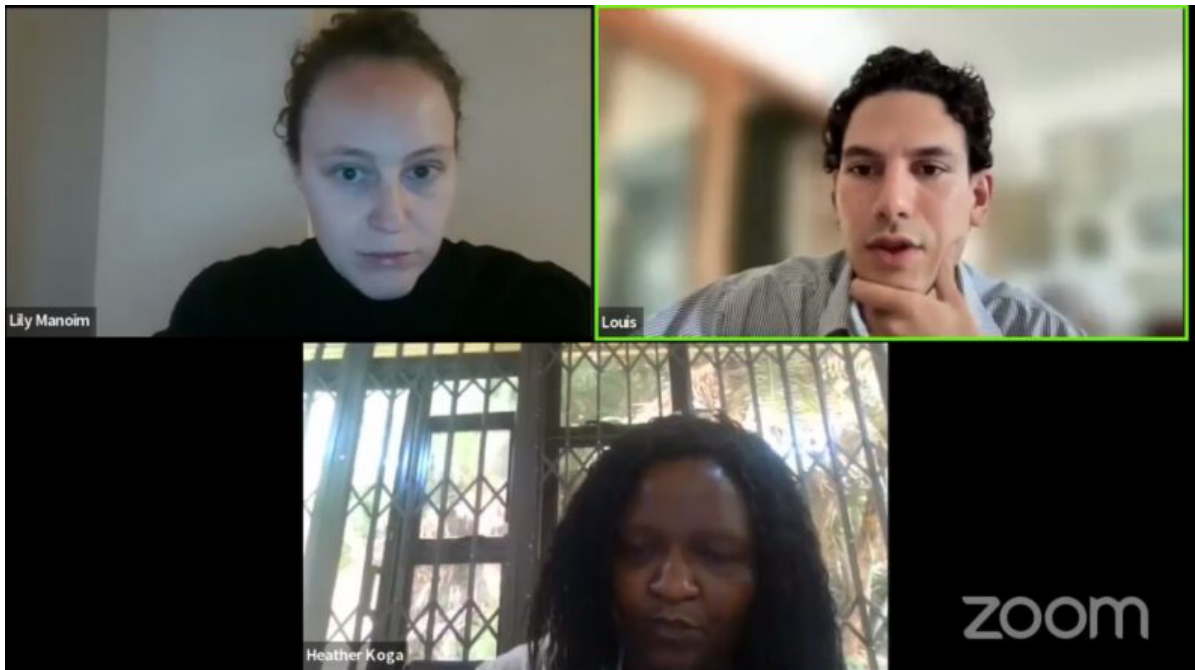
Policy Brief

1 December 2023

Zoom Online Platform

# SALO Virtual Dialogue on Zimbabwe: The Role of Legal Frameworks in Shaping Political Discourse and Controlling Dissent within Zimbabwe

*By Athenkosi Thoba*



## Introduction

On 1 December 2023, the Southern African Liaison Office (SALO) convened a public dialogue supported by the Norwegian embassy titled *“The Role of Legal Frameworks in Shaping Political Discourse and Controlling Dissent within Zimbabwe”*. There were addresses from Heather Koga of the Zimbabwe Election Support Network (ZESN); Willard Madzimbamuto, a Member of Parliament and lawyer; Terence Chitapi from the Crisis in Zimbabwe Coalition; and Lwazi Somya from SALO.

This workshop sought to provide a nuanced examination of the way in which the law is being used in Zimbabwe's political arena—both as a tool for political manoeuvring and as a means of suppressing opposition voices. The objective of the workshop was to link the recent “lawfare” in Zimbabwe to the political situation – how legal mechanisms are strategically used or manipulated to achieve political objectives, impacting democratic processes and the balance of power.

## Contextual Analysis

Terence Chitapi began his address by highlighting the importance of the law, and subsequently summarising the fundamental problem in Zimbabwe today. As he noted:

*“...The foremost legal document for any state or any nation is its constitution, which I think is supposed to be the paramount legal instrument that the state must rely upon in the administration of the affairs of the state, in terms of dictating the relations between the state and its citizens or its society, that must be encapsulated in the Constitution, which I think then forms what many identify as the social contract between the state and its citizens in terms of how things are supposed to be done, how the law is supposed to be interpreted, and so forth, which is what I think we have seen lacking in the Zimbabwean state”*.<sup>1</sup>

The SALO dialogue focused on the state's role in silencing the opposition and civil society through the legislative framework. The argument is that Zimbabwe is using the law as an instrument against dissenting voices. The discussion highlighted that the Second Republic is pushing towards a one-party state, with manoeuvres aimed at eliminating formal political opposition from the political arena, underscoring this intent. The current regime has used legislation to address its political challenges by stifling the activities of civil society actors, to limit civic and democratic space. Chitapi contextualised this weaponisation of the law:

*“Part of it, as we have also seen, is the selective application of that law, where you have those that are deemed to be pro-state; they have a different way in*

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<sup>1</sup> Chitapi, T. 2023. The Role of Legal Frameworks in shaping political discourse and Controlling Dissent within Zimbabwe. *Southern African Liaison Office*. 1 December. Available: <https://www.salo.org.za/the-role-of-legal-frameworks-in-shaping-political-discourse-controlling-dissent-within-zimbabwe-1-dec-2023/> [13 May 2024].

*which the law is applied to them as opposed to those that are considered dissenters. It is those aspects of the law that we need to be looking at”.*<sup>2</sup>

### *Legal Framework on Freedom of Expression and Assembly*

The perception among civil society and members of the opposition within Zimbabwe is that the current situation in the country requires urgent attention. This is partly due to the state's increasing use of the law to infringe upon the rights of its people. The argument is that the government is effectively at war with its citizens, who continue to demand a better society. In this sense, the issue of human rights does not seem to matter for the current regime in Harare. According to Fadzayi Mahere, the legal system is weaponised as a tool to silence, intimidate and harass those who voice their opinion and displeasure with the current state of social, political and economic conditions in Zimbabwe.<sup>3</sup>

The regime's abuse of the legal framework has been noted by various stakeholders, including ZESN, who view the signing of these laws as an attack on the rights to freedom of expression, assembly, and participation. One example is the Private Voluntary Organisations Amendment (PVO) Bill, approved by Parliament. According to civil society groups, this Bill aims to gag civil society organisations by subjecting them to harsh sanctions and strict government control. Heather Koga noted how CSOs must get permission in courts from local authorities to operate in some areas of the country even though the Bill has not been signed into law, and the requirement to register organisations has resulted in a form of self-censor as CSOs seek to comply. Yet the government claims that the law seeks to put in place measures to improve the administration, accountability and transparency of charities working in the country.<sup>4</sup> Another example is the Criminal Law Code Amendment Act, commonly known as the Patriotic Act. According to Koga, the law should be repealed or sanitised to demonstrate a commitment to democracy. As she put it in the dialogue:

*“The timing of the [Act] is of concern because this is the time when we are really in full swing in preparation for the election. Various stakeholders, including the media, are really against this [Act] and its provisions. The analysis is that it really violates the Bill of Rights in the Constitution and those freedoms that I spoke about. This is one of the laws that we are really advocating for – the*

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<sup>2</sup> Chitapi, T. 2023. The Role of Legal Frameworks in shaping political discourse and Controlling Dissent within Zimbabwe. *Southern African Liaison Office*. 1 December. Available: <https://www.salo.org.za/the-role-of-legal-frameworks-in-shaping-political-discourse-controlling-dissent-within-zimbabwe-1-dec-2023/> [13 May 2024].

<sup>3</sup> Mahere, F. 2023. Zim opposition spokesperson recounts the tragedy of her country at Geneva Summit. *News24*. 22 May. Available: <https://www.news24.com/news24/africa/news/full-speech-zim-opposition-spokesperson-recounts-the-tragedy-of-her-country-at-geneva-summit-20230522> [15 May 2024]

<sup>4</sup> Africa News. 2023. *Zimbabwe approves 'draconian' law targeting civil society*. 2 February. Available: <https://www.africanews.com/2023/02/02/zimbabwe-approves-draconian-law-targeting-civil-society//> [15 May 2024]

*amendment, the repeal, or at least the replacement with a more democratic law”.*<sup>5</sup>

### *Political Economy and the Role of the Constitution*

The 2013 Zimbabwe Constitution reflects key issues regarding the conduct of business and the functioning of the economy. It gives fundamental “*parameters of how business is conducted, how citizens in the state interact, how citizens interact amongst themselves, and how certain aspects of that constitution are actualised*”.<sup>6</sup> In essence, the rule of law is critical for the well-being or the well-functioning of the economy. According to Chitapi, the state has to look closely into the issue of property rights, which underpins how owners of property and those who sell their labour in a capitalist economy can do so in a fair manner. The weaponisation of the law by the state against people who are deemed to be in dissent cuts across all spheres of the state and has an important effect on the functioning of the economy. In terms of historical considerations, the onset of the Fast Track Land Reform Programme in 2000 shifted “*Zimbabwe's previously formal economy, obviously anchored on large-scale commercial farming dominated by the white minority, to an informal economy which is now no longer just about large-scale commercial farming but also has aspects of very informal economic activity by citizens across mining, across the retail sector, and a whole lot of other economic activities which are largely done in an informal manner*”.<sup>7</sup>

The SALO dialogue highlighted that within this informal dispensation, Zimbabwe has seen a significant disregard for the law and the Constitution, impacting the economy. This disregard has sparked dissent, with people questioning the state's actions and its management of the economy. As a result, the state has resorted to authoritarianism to counter dissent and many Zimbabweans have become economic refugees in neighbouring countries. The state-sponsored attack on the Constitution and legal framework has led to major social and economic hardships.

### *Civic Space and Democratisation*

In Zimbabwe, the ruling elite has been using the military, the courts, and other forms of legal warfare to enforce one-party state tactics and ensure that there is no legitimate opposition. This places the responsibility on civil society actors to engage in honest conversations about the ongoing state repression and develop counterstrategies to defend civic and democratic space and provide a genuine counterbalance to the power and authority exercised by the ruling elite.

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<sup>5</sup> Koga, H. 2023. The Role of Legal Frameworks in shaping political discourse and Controlling Dissent within Zimbabwe. *Southern African Liaison Office*. 1 December. Available: <https://www.salo.org.za/the-role-of-legal-frameworks-in-shaping-political-discourse-controlling-dissent-within-zimbabwe-1-dec-2023/> [13 May 2024].

<sup>6</sup> Chitapi, T. 2023. The Role of Legal Frameworks in shaping political discourse and Controlling Dissent within Zimbabwe. *Southern African Liaison Office*. 1 December. Available: <https://www.salo.org.za/the-role-of-legal-frameworks-in-shaping-political-discourse-controlling-dissent-within-zimbabwe-1-dec-2023/> [13 May 2024].

<sup>7</sup> Ibid

It is known that whenever elections occur, petitions and legal cases soon follow as part of the electoral process. The tainting of the legal profession during this time is a significant concern, and analysts including Ms Koga argue that this has a substantial possibility of affecting judicial decisions related to electoral and other democratic processes. Central to this legal standpoint is the problematic nature of infringing on democratic practices and the impact such infringements have on the rule of law and good governance. The state remains deliberate in its efforts to silence every form of dissent at an early stage. The experience of the Zimbabwe National Students Union (ZINASU), where almost all ZINASU candidates for the University of Zimbabwe Student Representative Council (UZSRC) elections were barred by the university, exemplifies the state's role in suppressing dissent. ZINASU tried to challenge the barring in court and its case was summarily dismissed.<sup>8</sup> This silencing of dissent is likely to put civil society in self-preservation mode, particularly in its confrontations with the state, to avoid persecution or worse. This situation requires critical responses from civic and regional actors. In this regard, Lwazi Somya pointed to the fact that:

*“The Zimbabwean problem has been happening over the years, but also the fact that it happens under the capture of almost every other state institution in the middle of a military state...it complicates things [more], but it is happening across the region, where slowly, those that have power tend to capture the judiciary and then weaponise the law to ensure that people are silenced”.*<sup>9</sup>

### *Regional Efforts to the Rule of Law*

The SADC region remains an important player in advancing democratisation and ensuring the recognition of the democratic process. Somya offered a multilateral perspective on how laws and lawfare impact Zimbabwe's democratic practice. He noted the seven SADC elections scheduled to take place in 2024 and the need to pay attention to the outcome of Zimbabwe and Swaziland's elections and the SADC Electoral Observer Mission (SEOM) reports looking ahead. In his view, there is a trend of the use of legal frameworks in both Zimbabwe and Swaziland to shrink democratic space and impact the electoral process – which could have knock-on effects in the region. Given the importance of the rule of law, the electoral process, and the recognition of democracy, these topics should be a consistent agenda for SADC states. They are likely to dominate regional media coverage and influence developments within the region in an election year.

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<sup>8</sup> Mutandiri, M. 2023. The Role of Legal Frameworks in shaping political discourse and Controlling Dissent within Zimbabwe. *Southern African Liaison Office*. 1 December. Available: <https://www.salo.org.za/the-role-of-legal-frameworks-in-shaping-political-discourse-controlling-dissent-within-zimbabwe-1-dec-2023/> [13 May 2024].

<sup>9</sup> Somya, L. 2023. The Role of Legal Frameworks in shaping political discourse and Controlling Dissent within Zimbabwe. *Southern African Liaison Office*. 1 December. Available: <https://www.salo.org.za/the-role-of-legal-frameworks-in-shaping-political-discourse-controlling-dissent-within-zimbabwe-1-dec-2023/> [13 May 2024].

The historical experience in Zimbabwe highlights the growing need for the inclusion of civil society groups in establishing a more stable, informed, and peaceful approach to elections. Concerning the presidential election in Zimbabwe, the SEOM Report highlighted issues related to laws passed by the state leading up to the 2023 elections, such as the PVO Bill. The introduction of this Bill further undermines the activities of civil society. Similar observations were made regarding the Swaziland elections, highlighting concerns about the political environment and legal framework. Given such developments, SADC as a regional body needs to address these issues, along with its political leadership. These societal contradictions are likely to manifest through other means, such as violence, if the vote is frustrated. The region must address these issues proactively to prevent political confrontation among the interested parties. This emphasis was made during the SALO dialogue.

## Policy Critiques

The issues raised in the dialogue centred on how the legal framework in Zimbabwe is being used to suppress dissent and undermine democratic processes, rather than upholding the rule of law and protecting fundamental rights. The key critiques include:

1. **Patriotic Act and PVO Bill:** The proposed and enacted legislation by the government are seen as an attack on freedoms of expression, assembly, and political participation and restricts freedom of association and the work of NGOs.
2. **Executive Interference in the Judiciary:** This is seen as potentially impacting the impartiality of the courts in handling electoral disputes and processes.
3. **Selective Application of the Law:** Pro-government actors face different consequences compared to opposition and civil society as a means of legal fare against dissenting voices.
4. **Erosion of Democratic Space:** Panellists argued that the cumulative effect of these legal and political tactics is the shrinking of civic and democratic space in Zimbabwe.

## Policy Recommendations

The overall recommendation expressed in the dialogue was for concerted efforts to push back against the authoritarian tendencies and legal warfare being used to suppress dissent and democratic participation in Zimbabwe. Specifically, the following recommendations were made:

1. Repeal or amend controversial laws such as the Patriotic Act and the PVO Bill that are seen as restricting democratic freedoms and civic space in Zimbabwe.

2. Address the concerns around the independence of the judiciary, particularly the allegations of executive interference and the impact on electoral processes.
3. A more coordinated and strategic approach by pro-democracy groups and civil society is essential to challenge the closing of democratic space, potentially through civil disobedience and other forms of protest.
4. SADC needs to uphold, enforce, and hold member states accountable to the Principles and Guidelines Governing Democratic Elections.
5. There is a need for solidarity and support from the international and regional community, including Zimbabwe's neighbours, to defend democracy and human rights in the country.

## Conclusion

The SALO dialogue highlighted the critical role of legal frameworks in shaping political discourse and controlling dissent in Zimbabwe. The state's deliberate use of laws to stifle opposition and civil society undermines democratic practices and the rule of law, leading to significant social and economic hardships. The dialogue emphasised the urgent need for concerted efforts by various stakeholders to defend and restore democratic space in the country. The conclusions point to the importance of a multi-pronged approach involving legal challenges, civic mobilisation, and regional and international pressure to address this critical issue.

With elections approaching in 2024, SADC states must prioritise the rule of law, fair electoral processes, and democratic recognition. Civil society actors must defend civic and democratic spaces and counterbalance the ruling elites' power. Including civil society groups is essential for a stable, informed, and peaceful approach to elections. Addressing the challenges of legal manipulation, shrinking democratic space, and gender inequality is crucial for advancing citizens' rights and ensuring a democratic future for Zimbabwe and the region.

*The analysis and recommendations included in this report do not necessarily reflect the view of SALO or any of the donors or conference participants, but rather draw upon the major strands of discussion put forward at the event. Participants neither reviewed nor approved this document. The contents of the report are the sole responsibility of SALO and can under no circumstances be regarded as reflecting the position of the donors who provided financial assistance for this policy dialogue session.*

**About the Southern African Liaison Office:**



The Southern African Liaison Office (SALO) is a South African-based not-for-profit civil society organisation which, through advocacy, dialogue, policy consensus and in-depth research and analysis, influences the current thinking and debates on foreign policy, especially regarding African crises and conflicts.

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