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**‘Do not be anxious for anything, but in every situation, by prayer and petition, with thanksgiving, present your requests to God. And the peace of God, which transcends all understanding, will guard your hearts and your minds in Christ Jesus.’
Philippians 4:6-7**

First and foremost, I give all glory, honour, and praise to the Lord Almighty, my refuge and my strength, my God in whom I trust. Through every challenge and triumph, His grace has sustained me, His wisdom has guided me, and His unfailing love has been my anchor. Without Him none of this would have been possible.

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Table of Abbreviations

ACHPR – African Commission on Human and Peoples’ Rights

ACtHPR – African Court on Human and Peoples’ Rights

AHRS – African Human Rights system

AI – Amnesty International

AU – African Union

AUCPCC – African Union Convention on Preventing and Combating Corruption

CA – Constitutive Act

CC – Constitutional Court

CED – International Convention for the Protection of All Persons from Enforced Disappearance

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women

CERD – International Convention on the Elimination of All Forms of Racial Discrimination

CIMT – Charter of the International Military Tribunal

CMW – International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

CRC – Convention on the Rights of the Child

CRPD – Convention on the Rights of Persons with Disabilities

CSOs – Civil Society Organisations

DHRD – Declaration on Human Rights Defenders

DNPO – Directorate for Nonprofit Organisations

EAC – East African Community

EACJ – East African Court of Justice

HC – High Court

HRDs – Human Rights Defenders

IACtHR – Inter-American Court of Human Rights

ICC – International Criminal Court

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ICJ – International Court of Justice

ICTR – International Criminal Tribunal for Rwanda

ILC – International Law Commission

LHRC – Legal and Human Rights Centre

MCT – Media Council of Tanzania

NDA – National Development Agency

NDP – National Development Plan

NDPP – National Director of Public Prosecutions

NGOs – Non-governmental Organisations

NPA – National Prosecuting Authority

NPOs – Nonprofit Organisations

OAU – Organisation of African Unity

OHCHR – Office of the United Nations High Commissioner for Human Rights

PCLU – Priority Crimes Litigation Unit

SALC – Southern African Litigation Centre

SAPS – South African Police Service

SCA – Supreme Court of Appeal

SuR – State under review

TAC – Treatment Action Campaign

TANU – Tanganyika African National Union

THRDC – Tanzania Human Rights Defenders Coalition

UDHR – Universal Declaration of Human Rights

UN – United Nations

UPR – Universal Periodic Review

Abstract

Post-Second World War, state-centric frameworks sought to establish global human rights norms. Despite this, significant accountability gaps remain, especially in regions where state capacity and will are limited. This minor dissertation explores the relationship between law and civil society in addressing impunity for international crimes, focusing on Tanzania and South Africa. The research examines how international, regional, and domestic legal frameworks in both countries enable or disable civil society organisations (CSOs) in their efforts to bridge those gaps and strengthen accountability mechanisms. Tanzania's limited domestication of international legal frameworks creates a disabling rather than enabling environment for CSOs. In contrast, South Africa's more integrated legal environment theoretically supports CSOs through various measures. The dissertation critically analyses how these contexts influence CSO operations, highlighting the challenges posed by state interferences that manifest in punitive compliance measures. It underscores the pivotal role of CSOs in utilising the law to ensure that states adhere to their legal obligations particularly through grassroots advocacy, public awareness campaigns, and strategic legal action. Furthermore, this desktop study analyses secondary sources such as legal documents, academic literature, and reports from both domestic and international CSOs. Key areas of focus include the influence of international and regional human rights treaties, the integration of these instruments into national frameworks, and how the level of domestication of said instruments affects the effectiveness of CSOs in combating impunity within their respective legal contexts. The findings contribute to a deeper understanding of how an enabling legal environment can allow CSOs to provide critical oversight of government actions or inactions concerning accountability for human rights violations. This work not only advances discussions on civil society's role in addressing issues within international criminal justice but also offers practical recommendations for enhancing their impact in Tanzania, South Africa, and similar contexts.

Key words: civil society, international criminal law, Rome Statute, impunity, accountability, civic space.

Chapter One

1.1 Background

The aftereffects of the Second World War spurred an international need to address the horrors of that conflict by establishing a state-centric¹ agenda that established the groundwork for the present global human rights framework. The atrocities of this period underscored the necessity of an effective and globally recognised structure for the protection of human rights. The crimes, characterised by their severe impact on international peace, security, and universally upheld values, were appropriately defined as international crimes. As Bassiouni notes, such crimes either threaten significant international community interests or involve conduct so egregious that it violates fundamental ethical norms.² Universally condemned, international crimes demanded coordinated global efforts to ensure proper and efficient prosecution and prevention.

Through a number of international and regional human rights instruments, the state-centric framework set normative standards intended to safeguard individuals' rights. It remains a cornerstone of the international legal order, recognising the state as both the guarantor of sovereignty and the primary duty bearer for protecting human rights. This design reflects a pragmatic belief that durable rights protection depends on effective state institutions. Yet, this reliance on states as the primary duty bearers has exposed inherent limitations.³ The assumption that states can simultaneously realise and uphold human rights often clashes with reality, as political interests, corruption, and resource constraints undermine their capacity to effectively adhere to their obligations. In many cases, large-scale violations arise not merely from institutional weakness or inaction, but also from situations where state structures or agents are directly or indirectly implicated; such dynamics reveal deeper systemic deficiencies within the existing framework of accountability.⁴ These shortcomings are particularly evident in addressing international crimes, where impunity habitually prevails. In regions with

¹ The concept of state-centrism positions the state as the principle authority over accountability mechanisms, see Susan Marks, 'State-Centrism, International Law, and the Anxieties of Influence' (2006) 19 *Leiden Journal of International Law* 339, 340.

² M Cherif Bassiouni, *Introduction to International Criminal Law* (Martinus Nijhoff Publishers 2013) cited in Robert Cryer, Darryl Robinson and Sergey Vasiliev, *An Introduction to International Criminal Law and Procedure* (Cambridge University Press 2019).

³ Zehra F. Kabasakal Arat, 'Looking beyond the State but Not Ignoring It: A Framework of Analysis for Non-State Actors and Human Rights' in George Andreopoulos, Zehra F Kabasakal Arat and Peter Juviler (eds), *Non-State Actors in the Human Rights Universe* (Lynne Rienner Publishers 2006) 3.

⁴ *ibid* 17.

underdeveloped or politically constrained domestic accountability systems,⁵ the state's failure is stark. While international mechanisms have sought to fill this void, making strides in prosecuting glaring human rights violations, however, their effectiveness is constrained by political and selective underpinnings.⁶ Consequently, there exists a critical accountability gap that is symptomatic of a deeper issue: the persistent challenge of addressing impunity and its far-reaching implications for justice and human rights.

1.2 Defining Impunity

The concept of impunity, as articulated by former Special Rapporteur Louis Joinet in his 1996 report on the Question of Impunity, encapsulates this challenge. Joinet defined the concept of impunity as the 'impossibility, either legally or in practice, of holding perpetrators accountable through administrative, civil, criminal, or disciplinary proceedings.'⁷ This definition underscores the barriers to justice that impede retributive efforts for human rights violations. It reflects a state where the legal system either fails or refuses to take necessary actions against perpetrators. Joinet later amended his definition to include the necessity of levying apt penalties on offenders and guaranteeing restitution for victims.⁸ This addition brings to light the dual aspects of addressing impunity: punishment of the guilty parties and redress for their victims. The inclusion of reparations presents a conceptual characteristic to Joinet's meaning of impunity,⁹ one that emphasises the importance of victim-centred justice, recognising that accountability is incomplete without addressing the harm done to victims.

By the same token, former Special Rapporteur El Hadji Guissé offers a similar definition that broadens the reach of impunity to encompass economic, social, and cultural rights, as well as collective or communal rights.¹⁰ Guissé's perspective offers a more holistic approach to

⁵ This phrase denotes contexts in which political interference, patronage, or executive control undermine the neutral application of the law, effectively reversing the principle that political accountability retains the misuse of power, see Jonathan Fox, 'Civil Society and Political Accountability: Propositions for Discussion' (2023).

⁶ Tim Murithi, *Judicial Imperialism: The Politicisation of International Criminal Justice in Africa* (Jacana Media 2019) 3; see also Timothy LH McCormack, 'Selective Reaction to Atrocity: War Crimes and the Development of International Criminal Law' (1997) 60 Albany Law Review 682, 683.

⁷ United Nations Economic and Social Council, Sub-Committee on Prevention of Discrimination and Protection of Minorities, 'Questions of the Impunity of Perpetrators of Human Rights Violations (Civil and Political Rights) U.N. Doc. E/CN.4/Sub.2/1996/18 (Prepared by Louis Joinet)' (1996) 13.

⁸ United Nations Economic and Social Council, Sub-Committee on Prevention of Discrimination and Protection of Minorities, 'Questions of the Impunity of Perpetrators of Human Rights Violations (Civil and Political Rights) Revised Final Report Prepared by Mr. Joinet pursuant to Sub-Commission Decision 1996/119' (1997) 17.

⁹ *ibid.*

¹⁰ United Nations Economic and Social Council, Sub-Committee on Prevention of Discrimination and Protection of Minorities, 'Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations (Economic, Social and Cultural Rights), Prepared by Mr. El Hadji Guissé, Special Rapporteur, pursuant to Sub-Commission Resolution 1996/24' (1997) 20.

understanding the phenomenon of impunity, stressing the broader implications of unchecked violations and the need for practical strategies to ensure that this broader scope translates into actionable justice. Both definitions and analyses underscore the multifaceted nature of impunity, underlining the necessity of both punishing perpetrators and ensuring that the needs of the victims are addressed. These concepts form the foundation of understanding how impunity undermines justice and perpetuates systemic violations. Their practical significance is perhaps best illustrated and substantiated in the precedent established by international courts.

For instance, the Inter-American Court of Human Rights (IACtHR) has been instrumental in shaping the discourse on impunity through its case law, establishing a robust precedent for state accountability in instances of breaches of human rights law.¹¹ The Court explicitly renders inadmissible any measures intended to excuse perpetrators from taking responsibility by obstructing investigations and failing to impose appropriate sanctions for serious human rights violations such as ‘torture, extrajudicial executions, and enforced disappearances.’¹² Such crimes violate absolute rights under international human rights law. Therefore, a state’s inability to prevent, investigate, and address human rights abuses constitutes a violation of its obligations under international law.¹³

The case of the *Massacres of El Mozote* provides a critical example of how the IACtHR applies international human rights law principles. In this case, the Court held that granting reprieve to offenders of grave human rights violations, is incompatible with the right to justice and the right to a fair trial (Articles 10 and 11 of the Universal Declaration of Human Rights 1948).¹⁴ The Court reasoned that such practices deny victims access to effective redress and undermine the broader societal interest in accountability and deterrence. By neglecting to investigate and pursue prosecution, the state is not only perpetuating impunity, it is also violating its duty to ensure justice, as required by international human rights law.

Undoubtedly, the IACtHR’s rulings are emblematic of a broader international movement toward accountability and the rejection of impunity. This commitment is not confined to the Americas but reflects a universal principle upheld by the global community. This was notably affirmed at the World Conference on Human Rights in 1993, where the international

¹¹ Karen L Engle, ‘Anti-Impunity and the Turn to Criminal Law in Human Rights’ (2015) 100 Cornell Law Review 1070, 1103.

¹² *Case of Barrios Altos v Peru* [2001] (Merits) IACtHR Series C No 75 [41]-[44].

¹³ *Case of Velásquez-Rodríguez v Honduras* [1988] (Merits) IACtHR Series C No 6 [174]-[176].

¹⁴ *Case of the Massacres of El Mozote and Nearby Places v El Salvador* [2012] (Merits, Reparations, and Costs) IACtHR Series C No 252 Section 4(a) [197]-[200].

community emphasised the importance of combating impunity as part of its commitment to human rights. The Vienna Declaration and Programme of Action, endorsed through agreement at the Conference, explicitly acknowledged that impunity for serious violations undermines justice and reconciliation. The Programme calls on states to ensure accountability mechanisms and strengthen their legal and institutional frameworks to address all phases of impunity.¹⁵

1.3 Civil Society

While the above accentuate the pivotal role of robust state mechanisms to uphold justice and prevent violations, the assumption that states can singularly safeguard human rights is often at odds with reality. As a result, it becomes evident that non-state actors, mainly civil society, play a critical role in bridging the gaps left by the state. In many instances, the enforcement of accountability frameworks, particularly in regions marked by weak institutions or political resistance, often relies on the persistent efforts of non-state actors. Indeed, in response to the state-centric approach to human rights protection, civil society has emerged as a pivotal actor, taking on the role of protector and mediator in instances where states are unsuccessful, or where the state itself is the perpetrator.

Encompassing a diverse range of non-state actors, including non-governmental organisations (NGOs) and advocacy groups, these entities operate independently of state control, which may enable, but does not necessarily ensure their impartiality. Civil society intervention primarily involves holding states accountable for human rights violations and reminding them of their obligations under international human rights law.¹⁶ This can involve public advocacy, legal action, and reporting violations to international bodies. Secondly, non-state actors often conduct in-depth investigations to uncover the underlying factor in human rights abuses. This includes analysing political, economic, and social factors that contribute to state failures and liabilities.¹⁷ Thirdly, civil society raises awareness about human rights issues through campaigns, public statements, and media management. Increased public awareness can lead to greater pressure on states to improve their human rights records.¹⁸

¹⁵ Vienna Declaration and Programme of Action (adopted on 25 June 1993 by the World Conference on Human Rights) 19.

¹⁶ Margaret E Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998) 16.

¹⁷ Arat (n 3) 18.

¹⁸ Ann Marie Clark, *Diplomacy of Conscience* (Princeton University Press 2001) 92–110.

Therefore, recognising the dynamic between the state and civil society is crucial, as the latter functions as a watchdog, uncovering both direct and indirect violations by shedding light on the underlying issues that contribute to the former's shortcomings.¹⁹

1.4 Problem Statement

International mechanisms have made significant strides in prosecuting egregious violations of international law, yet their effectiveness is prone to constraint from political influences and selective application, undermining their ability to achieve consistent and equitable justice. In this context, civil society has emerged as a pivotal actor, stepping in to protect victims, advocate for accountability, and mediate in instances where states are incapable or unwilling to act. In the United Republic of Tanzania and the Republic of South Africa, CSOs play crucial yet distinct roles in combating impunity for international crimes. While both countries have vibrant civic sectors, their legal frameworks, and historical trajectories shape how CSOs engage with state institutions and international justice mechanisms. In Tanzania, restricted civic space and state oversight often limit CSO intervention in accountability processes, whereas in South Africa, a comparatively open legal and political environment has allowed CSOs to pursue strategic litigation and advocacy with greater impact. These contrasts, and occasional convergences, warrant a comparative analysis of how CSOs in both jurisdictions contribute to or are constrained in their fight against impunity.

1.5 Research Questions

This minor dissertation is guided by the central question: *'What is the role of international, regional and domestic law in enabling or disabling the work of civil society in the United Republic of Tanzania and the Republic of South Africa?'* This question establishes a robust structure for analysing the interplay between law and civil society across all levels, allowing for a critical examination of how legal structures influence the capacity and ability of civil society to function effectively. The focus will be on identifying both the enabling and disabling factors that shape the work of civil society across different contexts.

To further explore this, the study proposes a secondary research question: *'What strategies do CSOs in Tanzania and South Africa employ to advocate for accountability for international crimes and how effective are those strategies?'* This question aims to investigate the specific methodologies used by CSOs to promote accountability and pursue legal action against perpetrators of international crimes. It considers the impact of CSO intervention while taking

¹⁹ *ibid.*

into consideration the fact that their strategies are shaped by the unique political, legal, and social contexts of each country.

1.6 Methodology

This minor dissertation adopts a desktop-based research methodology, focusing on the analysis of secondary sources, such as academic articles, legal documents, reports from international organisations, and civil society publications, to explore the role of law in enabling or disabling civil society's work in Tanzania and South Africa. The research will involve a comprehensive review of international, regional, and domestic legal instruments, with particular attention to how these laws influence CSO ability to advocate for accountability for international crimes.

The first stage of the research will involve mapping the international and regional mechanisms that provide a legal basis for civil society's involvement in upholding human rights protections. The second stage will examine domestic legal systems in Tanzania and South Africa, focusing on national laws and policies that either support or discourage CSOs in their efforts to address impunity, subsequently comparing how these factors play out in the distinct legal and political environments of both countries.

1.7 Objectives of Study

This study seeks to offer an understanding of how legal frameworks at various levels impact civil society's role in promoting justice and accountability for severe breaches of human rights principles. This minor dissertation specifically aims to:

1. Analyse how international and regional frameworks influence the capacity of CSOs to advocate for accountability in relation to largescale offences.
2. Investigate the impact of national legal systems in Tanzania and South Africa on the ability of CSOs to address impunity, focusing on laws that either facilitate or hinder their activities and comparing how these factors differ across the political and legal contexts of the two countries.
3. Assess the strategies employed by CSOs in both countries to promote culpability for domestic human rights violations and international crimes, evaluating their effectiveness in achieving tangible outcomes such as legal reforms, policy changes, and public awareness.

1.8 Scope and Limitations

1. Scope of the study: This study investigates the strategies employed by CSOs in Tanzania and South Africa to combat impunity, evaluates their effectiveness and explores the broader legal and political contexts that shape their work. While the minor dissertation engages with the broader international and regional frameworks relevant to accountability, its primary focus lies within the domain of international human rights law. This approach was adopted to allow for a more nuanced examination of both countries' positions and obligations in this field. Although international human rights law and international criminal law may be closely linked, each reinforcing the other in the pursuit of justice and accountability, the central argument of this study is rooted in the former. The emphasis on human rights law thus provides a broader foundation from which to assess how civil society operates within, and responds to, the structural and normative limitation of both Tanzania's and South Africa's legal systems.
2. Geographical focus: The study compares Tanzania and South Africa due to their contrasting legal systems and political landscapes. Tanzania has engaged in international criminal justice initiatives but has not fully domesticated international instruments that would enable grass-root participation in international criminal law. On the contrary, South Africa has integrated international instruments into its domestic legal framework, ensuring broader grass-roots participation in international criminal law and enhancing its involvement in international criminal justice initiatives. This comparison highlights how differing national contexts impact CSO ability to influence accountability for international crimes.
3. Limitations: Whereas the purpose of this study is to provide valuable insights into civil society engagement in bridging the accountability gap, a few limitations should be recognised:
 - Data availability: Given the desktop-based nature of this research, access to comprehensive and reliable data, particularly from CSOs in Tanzania, is limited. The quality and availability of data may affect the depth of the analysis, especially in comparing the two countries. A more comprehensive empirical study would be necessary to draw broader conclusions. Thus, the findings are constrained to the scope of this minor dissertation.
 - Scope and rationale for limited case analysis: Given the minor dissertation's scope, the discussion on South Africa centres on two emblematic South African

cases, the *Zimbabwe Torture Docket* and the case of al Bashir. These cases were selected not only for their extensive documentation and jurisprudential significance, but also because they effectively illustrate the modalities through which CSOs engage with accountability mechanisms. While numerous other cases remain relevant, a detailed exploration of all is beyond the practical limitations of this research.

- **Generalisability:** The findings of this research may not be directly applicable to other countries with different legal or political environments. The unique contexts of Tanzania and South Africa must be considered when employing the insights to other regions.
- **Contextual factors:** The study does not fully explore all contextual elements, such as public attitudes toward justice, that may affect the success of CSO strategies. These aspects may vary significantly between the two countries.

1.9 Contributions to Literature

This minor dissertation aims to contribute to the existing body of literature on the role of civil society in international criminal law and human rights law. It bridges theory and practice by examining how legal frameworks influence civil society's capacity to address impunity for international crimes. Through a comparative analysis of Tanzania and South Africa, it highlights the impact of legal and political contexts on civil society, filling a gap in region-specific studies. The research documents strategies employed by CSOs to navigate restrictive environments, providing practical insights for advocacy and policy reform. Furthermore, it emphasises the importance of robust legal frameworks and domestication of international instruments in enabling civil society. By exploring the dynamics between shrinking civic spaces and CSO resilience, the minor dissertation adds to the global discourse on civic space and accountability, offering a valuable resource for policymakers, practitioners, and scholars.

1.10 Conclusion

Chapter one has revealed the inherent tensions within the state-centric framework for human rights protection, particularly in addressing impunity for international crimes. While the post-Second World War legal architecture sought to establish universal norms for safeguarding human dignity, it often fails due to the nature of state sovereignty. States, despite being the primary duty bearers, are frequently compromised by political will, corruption, and limited resources, factors that prevent them from effectively enforcing human rights standards. This

systemic failure to ensure accountability exposes the critical gap between international human rights law and its practical application.

The judicial progress made by international bodies like the IACtHR, although significant, has yet to overcome the selective and politicised nature of accountability in global human rights law. The focus on state accountability, while necessary, remains insufficient in light of the continuing reality of impunity, where perpetrators often evade justice due to state failure. Accordingly, the chapter underscores civil society's crucial contribution in addressing these gaps. Non-state actors, through their independent monitoring, advocacy, and mobilisation efforts, provide a critical counterbalance to the state's often inadequate responsiveness to human rights violations. Civil society's actions not only hold states accountable but also challenge the limitations of international mechanisms that are constrained by state agendas.

1.11 Chapter outlines

Chapter two: This chapter explores the critical role of CSOs in advancing human rights and combatting impunity, focusing on their contributions within international and regional frameworks. It examines the legal foundations enabling CSO involvement, their advocacy for international criminal accountability, and the challenges they face in their efforts to uphold justice.

Chapter three: This chapter examines the legal and institutional frameworks governing civil society in Tanzania. It evaluates Tanzania's engagement with international law, the limitations of non-domestication of international instruments, and the challenges faced by CSOs, highlighting their resilience and strategies in navigating a restrictive civic space to advocate for human rights and justice.

Chapter four: This chapter explores South Africa's legal and institutional frameworks for supporting civil society in prosecuting international crimes, with a focus on the transformative role of its Constitution and key legislative measures. It also examines the challenges of implementation, highlighting landmark cases that illustrate both the potential and limitations of civil society in advancing accountability.

Chapter five: This chapter synthesises the findings of the minor dissertation and assesses the challenges and lessons learned from civil society's engagement in advancing accountability and justice in Tanzania and South Africa.

Chapter Two

‘The determination and integrity of civil society actors bring a feeling of a great and powerful debt being owed, and the will to continue working for the equal and inalienable dignity and rights of every human being.’²⁰

Civil society can be interpreted as a realm that is separate from but still works in tandem with the state, and within this realm, individuals unite and participate in similar ventures.²¹ The term ‘civil society’ generally includes all non-state or non-institutional actors²² such as, ‘women’s groups, trade unions, chambers of commerce, farming/housing cooperatives, neighbourhood watch associations, religion-based organisations,’²³ as well as human rights organisations. This diverse composition allows civil society to address a multitude of issues and advocate for various causes, making it an indispensable component of a country’s social and political landscape. Although separate from the state, civil society often collaborates with the former to advance and uphold human rights. Their collaboration is crucial as it allows entities external to the state to leverage state mechanisms and resources to advance their objectives. At the same time, maintaining a degree of independence is essential for civil society to function as a watchdog, ensuring that state actions align with international human rights principles. This duality underscores the unique position of non-state actors in the international justice system.

The role of civil society²⁴ in international spaces is particularly fundamental as it encompasses a wide range of activities, including ‘initiating diplomatic efforts, preparing reports on human rights issues, making public statements, influencing the deliberations of human rights bodies, shaping public opinion, impacting foreign policy and acting as unofficial ombudsmen.’²⁵ This

²⁰ Zeid Ra’ad Al-Hussein, United Nations High Commissioner for Human Rights, October 2014 in: Office of the High Commissioner for Human Rights, ‘Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society’ (2014).

²¹ Simone Chambers and Jeffrey Kopstein, ‘Civil Society and the State’ in John S Dryzek, Bonnie Honig and Anne Phillips (eds), *The Oxford Handbook of Political Theory* (Oxford University Press 2008) 365.

²² Henry Burmester, ‘Civil Society and the Instigation of International Court Litigation: The Australian Experience’ (2021) 21 Melbourne Journal of International Law 772.

²³ Commission On Global Governance, *Our Global Neighbourhood: The Report of the Commission on Global Governance*. (Oxford University Press 1995) in Mónica Pinto, ‘NGOs and the Inter-American Court of Human Rights’ in Tullio Treves and others (eds), *Civil Society, International Courts and Compliance Bodies* (TMC Asher Press 2005) 47.

²⁴ For the purposes of this study, the terms ‘civil society’ and ‘civil society organisations’ (CSOs) refer specifically to organisations engaged in human rights advocacy and related activities.

²⁵ Felix Ermacora, ‘Non-Governmental Organisations as Promoters of Human Rights’ in Franz Matscher and Herbert Petzold (eds), *Protecting Human Rights: The European Dimension* (Cologne. Heymanns 1990) 171-80, 172.

chapter examines the portrayal of CSOs within both the international and African human rights systems, analysing the roles ascribed to them and the narratives surrounding their work.

2.1 CSOs in the international human rights system

As noted in chapter one, the historical origins of contemporary international human rights law, rooted in the atrocities committed during the Second World War,²⁶ underscore the transformative impact of the catastrophic consequences of unchecked state power and systematic human rights abuses. Similar to how the French Revolution resulted in the abolition of the ‘doctrine of the divine right of kings’ and the placement of sovereignty in the hands of the people consequently establishing ‘equality before the law,’ the human rights revolution fundamentally redefined the interactions between states and individuals within the scope of international law.²⁷

This shift was cemented through the Charter of the United Nations,²⁸ which laid the legal foundation for the development of the current global human rights regime.²⁹ From a legal standpoint, the Charter shifted the human rights model and laid the groundwork for a system that could ensure that states are held responsible for breaches of human rights law and in doing so, transformed human rights into ‘the subject of international treaty obligations.’³⁰ As a result, human rights became an international concern with legal consequences for states that violated them, they were no longer viewed solely as internal issues within a state’s jurisdiction. The Charter’s provisions spurred the advance of a comprehensive framework of international human rights law, encompassing agreements, instruments, and institutions, such as the United Nations (UN), its specialised agencies and regional intergovernmental organisations like the Council of Europe, the Organisation of American States as well as the Organisation of African Unity, all playing critical roles in advancing and enforcing these norms.³¹ While human rights violations persist, modern international human rights law gave rise to a reality more attuned to

²⁶ John P Humphrey, ‘The Universal Declaration of Human Rights: Its History, Impact and Juridical Character’ in Bertie G Ramcharan (ed), *Human Rights: Thirty Years After the Universal Declaration* (Brill | Nijhoff 2024) 22.

²⁷ Louis B Sohn, ‘The New International Law: Protection of the Rights of Individuals rather than States’ (1982) 32 *American University Law Review* 1.

²⁸ Charter of the United Nations (adopted June 26 1945, entered into force 24 October 1945) XV UNCIO 335, amendments in 557 UNTS 143, 638 UNTS 308 and 892 UNTS 119.

²⁹ Thomas Buergenthal, ‘International Human Rights Law and Institutions: Accomplishments and Prospects’ (1988) 63 *Washington Law Review* 1, 3.

³⁰ *ibid* 4.

³¹ *ibid*.

the illegality of human rights abuses and increasingly supportive of efforts—both governmental and non-governmental—to address them.³²

Within this broader framework, the Universal Declaration of Human Rights (UDHR) 1948³³ has become the focal point of the current human rights regime.³⁴ As the first comprehensive and detailed articulation of fundamental individual rights,³⁵ the UDHR enumerates an individual's rights and freedoms and provides a normative framework that has inspired countless treaties, national constitutions, and policies.

The significance of the UDHR extends beyond its role as a foundational legal instrument; it has also provided the framework through which CSOs can advocate for human rights. By establishing universal standards, the UDHR has created a legal and moral basis for CSOs to promote, protect, and enforce these rights. As such, international human rights law can act as both a shield and a sword for CSOs: a shield in the sense that it legitimises their existence and activities, and a sword in that it equips them with tools to challenge rights violations and hold states accountable, thereby enabling these organisations to fulfil their role as critical actors in promoting transparency, accountability, and good governance.³⁶ These roles are directly supported by the UDHR, particularly through Articles 19, 20, and 21, which establish the individual's rights to freedom of opinion, expression, peaceful assembly, and participation in public life. These provisions not only form the legal foundation for CSO advocacy, they enable participatory governance by ensuring that individuals and groups can engage in public discourse and decision-making processes.

Furthermore, the impact of the UDHR transcends its immediate provisions, shaping the development of legally binding treaties that bolster CSO roles. For instance, the International Covenant on Civil and Political Rights (ICCPR) 1966 has reinforced the aforementioned principles, providing additional mechanisms and platforms for CSOs to pursue justice and accountability. The Covenant provides a clear structure for the scope and limitations of the right to freedom of expression in Article 19, the right to peaceful assembly in Article 21, and the right to peaceful association in Article 22. It also outlines the practical measures for safeguarding and ensuring the effective implementation of these rights. By doing so, the ICCPR

³² *ibid.*

³³ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

³⁴ Buergenthal (n 29) 6.

³⁵ *ibid.*

³⁶ Human Rights Council, 'Resolution 24/21. Civil Society Space: Creating and Maintaining, in Law and in Practice, a Safe and Enabling Environment' (2013) A/HRC/RES/24/21, 2.

strengthens the legal framework for individuals to actively participate in civil society. Similarly, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 recognises the individual's right to participate in cultural life³⁷ and workers' rights to form or join trade unions,³⁸ formally acknowledging and protecting specific rights that are central to citizen participation in society and are essential components of social and economic development. The Covenants were created to close the legal void created by the non-enforceable nature of the UDHR by translating its general principles into concrete, legally-binding treaty obligations for states that ratify them.³⁹

Several other instruments also expound on these principles, providing a legal basis for underserved or disadvantaged groups to actively engage in public life through CSOs. For example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1981 ensures women's involvement in political, social, economic, and cultural life.⁴⁰ CEDAW explicitly recognises that women's active and equal role in both public and private life is an essential component for the 'prosperity of society'.⁴¹ Moreover, the Convention on the Rights of the Child (CRC) 1989 protects the rights of children to express their thoughts and opinions freely,⁴² to form and join groups or organisations and to gather peacefully with others.⁴³ By including these protections, the CRC recognises children as active participants in society with individual rights, not merely as dependents or passive recipients of care.

The Convention on the Rights of Persons with Disabilities (CRPD) 2006 affirms similar rights, emphasising removing barriers that may prevent persons with disabilities from contributing to public decision-making, cultural expression, or other social activities.⁴⁴ By affirming these rights, the CRPD recognises the value of inclusivity and the need to empower all individuals to take an engaged and participatory role in society, regardless of physical or mental abilities. Likewise, the International Convention on the Elimination of All Forms of Racial

³⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 15(a).

³⁸ *ibid* art 8.

³⁹ Buerghenthal (n 29) 10.

⁴⁰ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) art 3.

⁴¹ *ibid* Preamble para. 7.

⁴² Convention on the Rights of a Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 13.

⁴³ *ibid* art 15.

⁴⁴ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 2 May 2008) 2515 UNTS 3 (CRPD) arts. 29-30.

Discrimination (CERD) 1965⁴⁵ articulates provisions on freedom of expression⁴⁶ and freedom of peaceful assembly and association.⁴⁷ By obliging states to eradicate racial discrimination and uphold these freedoms without bias, CERD creates a protective environment that advances the work of CSOs by holding governments accountable for discriminatory practices, fostering inclusive participation in public life and promoting human rights.

Likewise, instruments such as the International Convention for the Protection of All Persons from Enforced Disappearance (CED) 2006 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) 2005 highlight and protect the right of individuals to form and participate in groups or organisations related to their specific issues. Article 24(7) of CED guarantees the right of individuals and groups to freely form and play a part in organisations focused on uncovering the facts regarding the conditions surrounding forced disappearances. Likewise, the CMW allows migrant workers and their families to establish and participate in associations which may be particularly important for advancing and protecting their rights.⁴⁸ These rights ensure that individuals and communities can collectively work toward addressing injustices, amplifying their voices, and advocating for systemic changes without fear of repression.

In addition, the Declaration on Human Rights Defenders (DHRD) 1998, adopted through General Resolution 53/144, articulates key obligations for states to guarantee a supportive environment for human rights advocacy. Under Article 1, the DHRD recognises that individuals are entitled to advocate for and safeguard their human rights, asserting the critical role human rights defenders play in fostering justice and equality. Articles 9 and 12 emphasise state responsibilities to safeguard human rights defenders (HRDs) from discrimination, harassment, or retaliation linked to their work. States are required to establish effective remedies for violations, conduct prompt and impartial investigations, and hold perpetrators accountable for any violations against HRDs. Additionally, the Declaration calls for legislative and administrative measures to create an enabling environment for HRDs, including public education on human rights and the setting up of independent bodies dedicated to their

⁴⁵ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (CERD).

⁴⁶ *ibid* art 5(d)(viii).

⁴⁷ CERD (n 45) art 5(d)(ix).

⁴⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 (CMW) art 26(1).

promotion and protection. Collectively, these provisions underline the vital role of HRDs and the corresponding state duties to ensure their safety, recognition, and operational freedom.

What's more, Human Rights Council Resolutions 27/31 and 24/21 specifically emphasise the contributions CSOs make in the advancement of human rights and maintaining democratic societies. Resolution 27/31 highlights the significance of establishing and preserving a secure and supportive environment for civil society, recognising that liberal civic space is crucial for achieving sustainable development and ensuring human rights compliance.⁴⁹ It calls on states to avoid committing actions that restrict CSOs and to actively remove barriers that hinder their work. Resolution 24/21 complements this by stressing the need for inclusive participation in governance, underlining that transparency and accountability—principles often championed by CSOs—are fundamental for fostering peace and prosperity.⁵⁰ Both Resolutions collectively declare that CSOs are not merely supplementary actors but are integral to the composition of human rights governance.

2.2 CSOs in the African human rights system

Having examined the function of civil society in the broader international context, it is essential to highlight its impact within regional frameworks, particularly within the African Human Rights system (AHRs). The urgent need for a regional human rights system in Africa was exacerbated by widespread violence perpetrated by dictators like Bokassa of the Central African Empire, Nguema of Equatorial Guinea, and Idi Amin of Uganda.⁵¹ These regimes were not isolated incidents but rather the result of deeper historical and socio-political factors. The legacy of colonialism left African nations with arbitrary borders, weak institutions, and economies heavily reliant on single commodities; fostering environments where autocratic rulers could easily gain and maintain power. Post-independence, many African states struggled with political instability, corruption, and ethnic tensions, which were often manipulated by dictators to consolidate their rule. This backdrop crystallised the fact that without effective human rights mechanisms, the standards that govern state conduct would remain trivial, making the creation of a regional human rights system even more pressing.⁵² The reputations of the European and Inter-American human rights systems, made it evident that these

⁴⁹ Human Rights Council, 'Resolution 27/31. Civil Society Space' (2014) A/HRC/RES/27/31, 3.

⁵⁰ Human Rights Council Res 24/21 (n 36).

⁵¹ Makau Mutua, 'The African Human Rights System: A Critical Evaluation' (United Nations Development Programme 2000) 5.

⁵² *ibid* 22.

institutions are crucial for ensuring accountability, protecting citizens and promoting democratic governance.⁵³

The foundation of the AHRS is rooted in the African Charter on Human and Peoples' Rights (ACHPR), which became effective on 21 October 1986, following support from Member States of the Organisation of African Unity (OAU).⁵⁴ This pivotal document marked a significant step towards codifying human rights norms specifically tailored to the African context. The OAU eventually evolved into the African Union (AU) in 2002, the transition marking a fundamental shift in approach, with human rights becoming central to the AU's agenda under the 2001 Constitutive Act (CA).⁵⁵ The CA emphasises the 'promotion and protection of human and peoples' rights' and underscores the AU's commitment to addressing broader socio-economic and political challenges facing the continent.⁵⁶

Accordingly, the implementation of this system within the continent corresponded with the inception of the 'African Renaissance,' a period marked by renewed efforts across Africa to address historical injustices and socio-economic challenges.⁵⁷ The African Renaissance was characterised by diverse coalitions of lawyers, journalist, and human rights activists who courageously championed human rights and the rule of law, despite facing immense challenges.⁵⁸ A notable example is the successful campaigns of South African civil society and political groups that fought against apartheid until its complete eradication in 1994.⁵⁹ Beyond South Africa's successful campaigns against that abhorrent practice, similar efforts were underway across the continent. Civil society movements in countries like Benin challenged authoritarian regimes, like that of dictator Mathieu Kerekou, and pushed for political change, echoing and reflecting widespread aspirations for African political reform and societal change.⁶⁰ Another key example is the Tanganyika African National Union (TANU), an organisation dedicated to promoting socialist principles aimed at financial autonomy and the abolition of corruption.⁶¹ TANU sought to achieve sustainable development and improve the

⁵³ Mutua (n 51).

⁵⁴ *ibid.*

⁵⁵ Christof Heyns, 'The African Regional Human Rights System: The African Charter' (2004) 108 Penn State Law Review 679, 681.

⁵⁶ Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001) Preamble.

⁵⁷ Mutua (n 51) 35.

⁵⁸ *ibid.*

⁵⁹ Mutua (n 51) 36.

⁶⁰ Mutua (n 51).

⁶¹ Madenge, 'Tanganyika African National Union (TANU) Bio' (*UnitedRepublicofTanzania.com* 10 February 2021) <<https://unitedrepublicoftanzania.com/history-of-tanzania/tanganyika/tanganyika-african-national-union-tanu-bio-political-party/>> accessed 9 July 2024.

living conditions of Tanzanians, thereby contributing to the socio-economic transformation of the country in the post-independence era. These movements not only sought to dismantle oppressive regimes they also advocated for economic and social reforms to address systemic inequalities and promote sustainable development.

Undoubtedly, civil society's contribution to the AHRS has been pivotal in shaping a more inclusive and participatory framework for contending with human rights issues on the continent.⁶² By codifying their involvement in key instruments, such as the ACHPR, the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights (Protocol to the ACHPR) 1998 and the African Union Convention on Preventing and Combating Corruption (AUCPCC) 2003, the AHRS formally integrates CSOs into its structures. This inclusive method not only enhances the legality and value of African human rights organisations but also ensures that they are responsive to the specific needs and challenges faced by various groups, particularly marginalised communities. The recognition of the consultative capacity of civil society within these frameworks highlights the essential role that it plays in influencing policy and fostering a more dynamic and responsive human rights system. When included in these settings, CSOs can provide materials, expertise, and assistance that formal institutions could not otherwise be privy to.⁶³ This partnership between civil society and African human rights institutions underscores the prominence of collaborative endeavours in the ongoing development and implementation of human rights standards across Africa.

Primarily, the ACHPR mandates cooperation between the African Commission on Human and Peoples' Rights (the Commission) and other institutions, both African and international, that work on the advancement of human rights, including CSOs.⁶⁴ In essence, the Commission is tasked with fostering partnerships with various stakeholders to augment its human rights mission and CSOs are recognised as vital contributors to these efforts. Additionally, the ACHPR also provides a mechanism for CSOs and individuals to directly engage with the AHRS by submitting communications or complaints about alleged human rights violations.⁶⁵ This mechanism enables CSOs to act as intermediaries or advocates for victims, thereby

⁶² The United Nations Division of Human Rights, 'Seminar on the Establishment of Regional Commissions on Human Rights with Special Reference to Africa' (1969) ST/TAO/HR/38.

⁶³ International Justice Resource Centre, 'Civil Society Access to International Oversight Bodies: African Commission on Human and Peoples' Rights' (2018).

⁶⁴ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) art 45(c).

⁶⁵ *ibid* art 55.

enhancing accountability and ensuring that violations are brought to the Commission for review and action. Similarly, Article 5(3) of the Protocol to the ACHPR allows relevant NGOs that have been granted leave to observe by the Commission, to participate in proceedings before the African Court.⁶⁶ Likewise, this provision grants individuals the right to directly bring cases before the Court, on condition that the state in question has made a declaration allowing for such access, as specified in Article 34(6) of the Protocol. What's more, the AUCPCC's provisions for CSOs calls for the vigorous involvement of civil society and the media in combating corruption and related offences. It requires Member States to create an environment that allows CSOs and the media to hold them accountable,⁶⁷ ensuring transparency in the management of public affairs and guaranteeing that legal processes are not compromised.

Indeed, states that have ratified the above international and regional instruments bear specific obligations to safeguard and promote the rights of CSOs. They are required to protect CSOs from interference, ensuring their freedoms of expression, assembly, and association are protected against infringements by state or non-state actors.⁶⁸ Additionally, states must establish enabling legal and institutional infrastructure that facilitates the formation, accreditation, and operation of CSOs without undue barriers.⁶⁹ Accountability mechanisms are essential, obligating states to address violations against CSOs and ensure that perpetrators face justice.⁷⁰ Moreover, states must actively involve CSOs in governance processes, enabling their participation in policy formulation and public-decision making, while also cooperating with international mechanisms to enhance transparency and compliance.⁷¹

Accordingly, the frameworks build a bedrock for CSOs to collaborate with international and regional bodies, document human rights abuses, and challenge undue restrictions. However, the practical realisation of these freedoms often depends on state compliance and this reliance on state adherence introduces vulnerabilities. Inconsistent state practices, exploitation of vague provisions, and restrictive measures—such as the criminalisation of dissent—can undermine the operational space for CSOs.⁷² Despite these challenges, the legal protections offered by

⁶⁶ This participation can be in the form of submitting shadow reports or observations as *amici*.

⁶⁷ African Union Convention on Preventing and Combating Corruption (adopted 11 July 2003, entered into force 5 August 2006) (AUCPCC) art 12(2).

⁶⁸ Human Rights Council, 'Resolution 21/16. The Rights to Freedom of Peaceful Assembly and of Association' (2012) A/HRC/RES/21/16, 2.

⁶⁹ Human Rights Council Res 24/21 (n 36).

⁷⁰ Human Rights Council, 'Resolution 12/16. Freedom of Opinion and Expression' (2009) A/HRC/RES/12/16, 3.

⁷¹ Human Rights Council Res 24/21 (n 36).

⁷² Human Rights Council Res 12/16 (n 70).

international and regional human rights law serve as critical tools for civil society to advocate for accountability and uphold democratic principles.

2.3 CSOs and international crimes

Civil society's expansive mandate underscores the versatility and indispensability of CSOs. CSO efforts range from engaging in diplomacy and producing human rights reports to influencing decision-making processes with human rights bodies.⁷³ Additionally, civil society has helped shape public discourse, guide foreign policy, and function as an informal watchdog, ensuring accountability in the implementation of human rights obligations.⁷⁴ In that regard, CSOs also actively engage in efforts to address the accountability gaps that arise in the prosecution of international crimes.

2.3.1 Defining international crimes

The precise legal definitions of international crimes are essential for understanding why CSOs are engaged in the fight against impunity—a core objective of this study. As noted in chapter one of this study, such crimes infringe on substantial interests of the international community or involve egregious conduct that affronts these values.⁷⁵ This framing underscores two critical aspects: the global significance of the maltreatment and the breach of shared ethical principles. These crimes— 'genocide, crimes against humanity, war crimes, and the crime of aggression'—are universally condemned and necessitate collective efforts for their prosecution and prevention.

The International Law Commission (ICL) aptly stated that 'crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.'⁷⁶ This is a defining feature of international criminal law as it introduces the critical aspect of individual responsibility. This principle emphasises that individuals bear obligations to the international community that supersede their duties under national laws.⁷⁷ By prioritising international obligations over state sovereignty, it ensures that individuals cannot evade accountability by invoking domestic legal

⁷³ Ermacora (n 25).

⁷⁴ *ibid.*

⁷⁵ Bassiouni (n 2).

⁷⁶ International Law Commission, 'The Charter and Judgment of the Nürnberg Tribunal: History and Analysis - Memorandum Submitted by the Secretary-General (Formulation of the Nürnberg Principles)' (1949) A/CN.4/5, 41.

⁷⁷ *ibid* 42.

protections. This foundational principle informs the characterisation of international crimes, as explored below.

Genocide

Genocide is often referred to as the ‘crime of crimes’ due to its distinct weightiness.⁷⁸ It can be characterised as the repudiation of ‘the right of existence of entire human groups,’ much like how homicide is the denunciation of a person’s right to live.⁷⁹ Genocide involves acts executed with the purpose to ‘destroy, in whole or in part, a national, ethnic, racial, or religious group.’⁸⁰ The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) enumerates such acts, including ‘killing members of the group, causing serious harm, deliberately inflicting conditions calculated to destroy the group, imposing measures to prevent births, and forcibly transferring children’.⁸¹ The defining component of genocide is the specific intention to annihilate a group, elevating its prevention and punishment to peremptory norm status—*jus cogens*.⁸² These norms impose *erga omnes* obligations,⁸³ meaning all states are responsible for preventing and punishing genocide.⁸⁴ This was exemplified in the *Bosnian Case*,⁸⁵ where Bosnia initiated proceedings at the International Court of Justice (ICJ), alleging that Serbia breached the provisions of the Genocide Convention by attempting to destroy Bosnia’s protected Muslim population. In this case, the Court found that the onus to prevent genocide necessitates states to utilise all means indispensable, as permitted by international law, to prevent persons or groups from engaging in genocide or the other offences outlined in Article III of the Convention.⁸⁶

⁷⁸ *The Prosecutor v Jean Kambanda (Judgement and Sentence)* ICTR 97-23-S (4 September 1988) [16].

⁷⁹ UNGA Res 96(I) (1947) GAOR Resumed 1st Sess. 188.

⁸⁰ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 art II.

⁸¹ *ibid.*

⁸² Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1115 UNTS 331 art 53: ‘a peremptory norm of general international law is a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.’

⁸³ *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (New Application: 1962) ICJ GL No 50 [1970] ICJ Rep 3 (Judgment of 5 February) [33]: ‘an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-a-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.’

⁸⁴ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion) [1951].

⁸⁵ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* [2007] ICJ (Judgment of 26 February).

⁸⁶ *ibid.*

Crimes against humanity

According to the International Criminal Tribunal for the Former Yugoslavia, crimes against humanity are grave and violent acts that severely impact individuals by destroying their lives, liberty, physical well-being, health, and dignity.⁸⁷ Crimes against humanity extend beyond the individual, as an assault on one person is an attack on humanity as a whole; it is humanity as the suffering party that essentially defines crimes against humanity.⁸⁸ Nonetheless, Friedman highlights a crucial qualifying phrase in the delineation of crimes against humanity, particularly the one outlined in Article 6(c) of the Charter of the International Military Tribunal (CIMT),⁸⁹ namely, ‘before or during the war,’ which implies that a context of war or armed hostilities is an indicator for crimes against humanity.⁹⁰ This stipulation can limit the scope of the offence’s applicability and may exclude acts of mass violence or systemic human rights abuses that occur in peacetime, thereby providing a loophole for perpetrators who commit atrocities outside armed conflict contexts.

War crimes

The CIMT, particularly Article 6(b), outlines a comprehensive list of acts that represent war crimes, including ‘murder, ill-treatment, deportation, the killing of hostages, plunder,’ and wanton destruction that this not justified by military necessity.⁹¹ These acts are emblematic of the severe nature of armed conflicts and the extensive impact they have on affected populations. It is valuable to note that the CIMT does not explicitly provide a definition for war crimes. The United Nations Office on Genocide Prevention and the Responsibility to Protect affirms that while international law does not stipulate a singular, explicit meaning of war crimes, various legal frameworks collectively offer enumerations of such crimes.⁹² The reliance on multiple sources of law may create inconsistencies and ambiguities in the interpretation and enforcement of the laws and customs that govern war crimes. Addressing these gaps is essential to bolster the credibility and adequacy of international criminal law in prosecuting war crimes, which remain central to civilian and combatant safety during the course of warfare.

⁸⁷ *The Prosecutor v Jean Kambanda* (n 78) [15].

⁸⁸ *ibid.*

⁸⁹ (adopted 8 August 1945, entered into force 8 August 1945) 350 IHL 49.

⁹⁰ Leon Friedman, ‘Definition of War Crimes and Their Use in the International Criminal Tribunals for the Former Yugoslavia and Rwanda’ (1999) 3 Hofstra Law and Policy Symposium 9.

⁹¹ Oona A Hathaway and others, ‘What Is a War Crime?’ (2019) 44 Yale Journal of International Law 54, 61.

⁹² United Nations, ‘War Crimes’ (*Un.org*) <<https://www.un.org/en/genocideprevention/war-crimes.shtml>> accessed 20 June 2024.

The crime of aggression

The crime of aggression, as defined in the United Nations General Assembly Resolution 3314 (XXIX) of 1974, involves ‘the use of force by a State against the sovereignty, territorial integrity, or political independence of another State ... in any other manner inconsistent with the Charter of the United Nations’. Efforts to codify the crime since the 1974 Resolution expose its political complexities, with scholars like Dawson critiquing the vagueness of terms such as ‘manifest violation’,⁹³ and Solera pointing to compromises that dilute the definition’s enforcement potential.⁹⁴ These limitations are particularly evident in modern conflicts involving hybrid actors, where the current definition struggles to account for the evolving nature of aggression. A more precise definition is necessary to enhance accountability for acts of aggression within a rapidly changing geopolitical landscape.

2.3.2 Civil society, international crimes, and the Rome Statute of the International Criminal Court

Amnesty International and the fight against torture

The intersection between CSOs and international crimes is exemplified by Amnesty International’s (AI) role in combating torture, a crime that represents extraordinarily severe violations of human rights. AI’s efforts in advocating for the adoption of the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment 1948 provides a compelling case study of how civil society is a proactive actor in ‘developing international norms and legal standards’.⁹⁵

AI’s campaign against torture, framed by their powerful assertion that torture is ‘the most flagrant denial of man’s humanity ... the ultimate human corruption’,⁹⁶ highlights the moral and ethical foundations that drove the organisation’s advocacy. This framing was not merely emotive but aimed at constructing a compelling legal and moral case for the global abolition of torture. By casting torture as the ultimate violation of human dignity, AI sought to build an international consensus on the necessity of legal prohibitions that would leave no room for ambiguity or exception. Furthermore, AI’s campaign also advocated for the inclusion of principles such as universal jurisdiction in international human rights instruments anticipated

⁹³ Grant M Dawson, ‘Defining Substantive Crimes within the Subject Matter Jurisdiction of the International Criminal Court: What Is the Crime of Aggression?’ (2000) 19 NYLS Journal of International and Comparative Law 413.

⁹⁴ Oscar Solera, ‘The Definition of the Crime of Aggression: Lessons Not-Learned’ (2010) 42 Case Western Reserve Journal of International Law 801.

⁹⁵ Dinah Shelton, *Remedies in International Human Rights Law* (2nd edn., Oxford University Press 2006) 611.

⁹⁶ Amnesty International, *Report on Torture* (2nd edn., Gerald Duckworth & Co Ltd 1975) 27.

to have binding effect on states, maintaining that these principles are essential components for the unequivocally outlawing of grievous crimes like torture.⁹⁷ The push for legal standards that transcend national borders aimed to create a vigorous framework for holding violators accountable and deterring future abuses. Their approach reveals how CSOs can reframe discussions around human rights violations, emphasising not only the moral imperatives but also the practical need for enforceable legal standards. By promoting universal jurisdiction, these instruments would ensure that perpetrators would face justice regardless of geographical boundaries. AI's role in this aspect of international law demonstrates the inventiveness of civil society in advancing human rights norms in the international arena.⁹⁸

The Rome Statute of the International Criminal Court

The above is a clear example of how CSOs are not merely reactive to human rights violations but are instead actively shaping the trajectory of international human rights law through strategic alliances, public mobilisation, and pushing for binding legal measures. This proactive civil society involvement reached a critical juncture with the drafting and implementation of the Rome Statute of the International Criminal Court (ICC). While AI and other organisations such as the International Association of Procedural Law laid much of the groundwork in advocating for universal jurisdiction over crimes like torture,⁹⁹ the endorsement of the Rome Statute represented a more comprehensive effort to formalise international criminal accountability. The Rome Statute establishes the ICC and introduces a robust legal framework for prosecuting international crimes. Over three years of sustained lobbying, research, and coalition building by CSOs, in close collaboration with governments and international institutions, resulted in the establishment of a 'permanent international court' capable of holding individuals responsible for the gravest offences.¹⁰⁰ This marks a critical moment in international law, illustrating civil society's role in pushing for legal structures capable of addressing impunity on a global scale.

What's more, the criminal justice system proposed by civil society through the Rome Statute placed heavy reliance on national legal systems, consequently offering rationalisation for

⁹⁷ Jayne Huckerby and Nigel Rodley, 'Outlawing Torture: The Story of Amnesty International's Efforts to Shape the UN Convention against Torture', *Human Rights Advocacy Stories* (Foundation Press 2009).

⁹⁸ *ibid* 16.

⁹⁹ *ibid*.

¹⁰⁰ William R Pace and Mark Thieroff, 'Participation on Non-Governmental Organisations' in Roy S Lee (ed), *The International Criminal Court: The Making of the Rome Statute* (Kluwer Law International 1999) 391.

domestication.¹⁰¹ Article 12 of the Statute affirms this by declaring that the Court's authority only extends to the territories and nationals of States Parties to the Statute of the ICC.¹⁰² Likewise, paragraph 10 of the Preamble recognises that the jurisdiction of the ICC is complementary to 'national criminal jurisdictions.'¹⁰³ Implying that national application of the Rome Statute's fundamental criminal law provisions is necessary, as national courts signify the 'primary entry points' for the investigation and prosecution of crimes, including international crimes.¹⁰⁴ This principle, known as complementarity, is practically applied in Article 17 of the Rome Statute that echoes its intention and aim: 'to protect sovereign interests in the pursuit of justice for crimes within the Court's jurisdiction.'¹⁰⁵ Therefore, it can be asserted that, the principle of complementarity embodies two main beliefs of international law: 'the principle of state sovereignty and the principle of primacy of action in respect of criminal prosecution.'¹⁰⁶ By enabling states to institute legal proceedings against international crimes using their own legal frameworks, this principle harmonises state sovereignty with the precedence of domestic criminal litigation.¹⁰⁷ It underscores that international proceedings alone are insufficient in the pursuit of justice and accentuates that national legal systems are crucial in ending impunity.¹⁰⁸ The Rome Statute notes that successful prosecution of international crimes can only stem from internationally supported but domestically executed measures.¹⁰⁹ Thus, signatories to the Rome Statute assume a degree of accountability and competence that involves undertaking several significant legal and practical actions.¹¹⁰ Nevertheless, for effective complementarity, States Parties must implement domestic legal measures to achieve the fundamental prerequisites of the Rome Statute.

¹⁰¹ Chacha Murungu and Japhet Biegon (eds), *Prosecuting International Crimes in Africa* (Pretoria University Law Press 2011) 285.

¹⁰² Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 art 12(1).

¹⁰³ *ibid* Preamble para. 10.

¹⁰⁴ Nicksoni Filbert Kahimba, Cecilia Edward Ngaiza and Boaz John Mabula, 'Domestic Prosecution of International Crimes in Tanzania: The State of the Law' (2020) 47 *Eastern Africa Law Review* 109.

¹⁰⁵ Sarah MH Nouwen, *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan* (Cambridge University Press 2013) 58.

¹⁰⁶ Xavier Philippe, 'The Principles of Universal Jurisdiction and Complementarity: How Do the Two Principles Intermesh?' (2006) 88 *International Review of the Red Cross* 375, 388.

¹⁰⁷ Mazhar Ali Khan, 'Balancing the Legitimate Interests of States: Exploring the Connection between the Principles of Universal Jurisdiction and Complementarity under the Rome Statute' (2024) 10 *Review of Human Rights* 1.

¹⁰⁸ Mary Robinson, *The Princeton Principles on Universal Jurisdiction* (Program in Law and Public Affairs, Princeton University 2001) 15.

¹⁰⁹ Max du Plessis, Antoinette Louw and Ottilia Maunganidze, 'African Efforts to Close the Impunity Gap: Lessons for Complementarity from National and Regional Actions' (ISS Paper 241 2012).

¹¹⁰ *ibid*.

2.4 Conclusion

CSOs have demonstrated their indispensable role in promoting and safeguarding human rights at both international and regional levels. Their capacity to advocate for legal reforms, influence policy, and hold governments accountable highlights their dual function as collaborators and watchdogs over state actions. The evolution of international human rights law, underpinned by landmark instruments such as the UDHR, ICCPR, ICESCR, and regional instruments like the ACHPR, has significantly enhanced the operational landscape for CSOs, legitimising their efforts and equipping them with critical tools to challenge violations.

Through their engagement with mechanisms such as the African Commission and the ICC, CSOs have not only contributed to the evolution of legal standards but have also played a vital role in their implementation. Their involvement in addressing international crimes—whether by documenting violations, advocating for accountability, or participating in the prosecution of perpetrators—demonstrates their unique potential to bridge the gap between global principles and local realities. However, as much as the frameworks of international and regional human rights empower CSOs, they are also constrained by state practices. Challenges such as restrictive laws and criminalisation of dissent pose significant hurdles to their work. In sum, the chapter underscores that while the journey towards a fully enabling environment for civil society remains fraught with challenges, the resilience and ingenuity of CSOs in leveraging international and regional frameworks are indispensable to advancing human rights and combating impunity.

In chapters three and four, this study undertakes a comparative analysis of civic space in Tanzania and South Africa, in relation to their international law obligations, national frameworks, and the realities of implementation. To provide a comprehensive and organised discussion, each country is addressed in a separate chapter. Chapter three focuses on Tanzania, while chapter four examines South Africa. This structure ensures a clear and systematic exploration of the legal environments and challenges faced by CSOs in each context, setting the stage for a nuanced understanding of their comparative dynamics in the battle against impunity for international crimes.

Chapter Three

Building upon the foundation laid in chapter two, which explored the role and significance of CSOs within international and regional human rights systems, this chapter delves into Tanzania's legal and constitutional framework for civil society engagement. It analyses the country's approach to integrating international legal obligations into domestic law and examines the role of CSOs as a countervailing force that ensures political considerations do not obstruct adherence to legal commitments. Additionally, it highlights key civil society interventions and the challenges faced by CSOs within a shrinking civic space.

The UDHR, ICCPR, and ICESCR are collectively known as the 'international bill of human rights' because they underpin international human rights law and grant 'everyone' the lion's share of the rights they identify.¹¹¹ These instruments transformed the narrative of states being the main foci of international law by establishing that: treaties can bestow international rights upon individuals.¹¹² This human-centric approach is underscored by the *Tadic* case, where it was found that international law must increasingly focus on protecting human beings rather than solely safeguarding state sovereignty.¹¹³

Tanzania has demonstrated notable commitment to advancing human rights and justice by signing, acceding to, and ratifying key human rights treaties that form the backbone of global and regional human rights frameworks.¹¹⁴ This commitment began with the accession of the CERD on 27 October 1972,¹¹⁵ followed by the accession of both the ICCPR and ICESCR on 11 June 1976.¹¹⁶ These foundational treaties laid the groundwork for Tanzania's engagement with the international human rights framework. Further commitments were made with the

¹¹¹ Human Rights Watch, 'The Human Rights of Undocumented Migrants, Asylum Seekers and Refugees in South Africa - Appendix A: South Africa's Obligation under International and Domestic Law' (1997).

¹¹² Bonita Meyersfeld, 'Domesticating International Standards: The Direction of International Human Rights Law in South Africa' (2013) 5 Constitutional Court Review 399.

¹¹³ *Prosecutor v Dusko Tadic aka 'Dule' (Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction)* [1995] Case No. IT-94-1-T ICTY [97].

¹¹⁴ United Nations Treaty Body Database, 'Ratification Status for United Republic of Tanzania' (*Ohchr.org* 2019) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=186&Lang=EN> accessed 22 October 2024.

¹¹⁵ United Nations Treaty Collection, 'International Convention on the Elimination of All Forms of Racial Discrimination' (*Un.org* 2009) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en> accessed 22 October 2024.

¹¹⁶ United Nations Treaty Collection, 'International Covenant on Civil and Political Rights' (*Un.org* 2019) <https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg_no=IV-4&src=IND> accessed 22 October 2024; United Nations Treaty Collection, 'International Covenant on Economic, Social and Cultural Rights' (*Un.org* 2009) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en> accessed 22 October 2024.

signing of CEDAW on 17 July 1980, and ratification on 20 August 1985.¹¹⁷ A substantial move toward protecting the rights of children came with the signing of the CRC on 1 June 1990, followed by its ratification on 10 June 1991.¹¹⁸ Tanzania has also acceded to the CRC's two Optional Protocols.¹¹⁹ Tanzania continued its dedication to human rights by signing the CRPD on 30 March 2007 and ratifying it on 10 November 2009.¹²⁰ Additionally, Tanzania signed the CED on 29 September 2008.¹²¹ The human rights standards¹²² derived from these instruments are enshrined in the Bill of Rights of the Constitution of the United Republic of Tanzania 1977 (Act No. 15 of 1984), which serves as a foundational framework for the protection and promotion of human rights in the country.

3.1 Constitutional and legal guarantees of an enabling environment for CSOs in Tanzania

To begin with, Article 9(f) of the Constitution provides a framework for interpreting fundamental rights and freedoms in light of international customary norms. The Article mandates that: 'human dignity should be preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights.'¹²³ Arguably, the role of Article 9(f) becomes one that bridges domestic law and international norms, positioning human rights principles as guiding tools for interpreting rights and freedoms in Tanzania. This provision strengthens the integration of international human rights law into Tanzania's legal framework, while also pointing to its potential as an instrument for advancing human rights domestically.

¹¹⁷ United Nations Treaty Collection, 'Convention on the Elimination of All Forms of Discrimination against Women' (*Un.org* 2019) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en> accessed 22 October 2024.

¹¹⁸ United Nations Treaty Collection, 'Convention on the Rights of the Child' (*treaties.un.org*) <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4> accessed 22 October 2024.

¹¹⁹ United Nations Treaty Body Database, 'Ratification Status for United Republic of Tanzania' (n 112): The Optional Protocol on the sale of children, child prostitution, and child pornography on 24 April 2003 and the Optional Protocol on the involvement of children in armed conflict on 11 November 2004.

¹²⁰ United Nations Treaty Collection, 'Convention on the Rights of Persons with Disabilities' (*Un.org* 2009) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en> accessed 22 October 2024.

¹²¹ United Nations Treaty Collection, 'International Convention for the Protection of All Persons from Enforced Disappearance' (*treaties.un.org*) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=en> accessed 22 October 2024.

¹²² Human Rights Council, 'National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: United Republic of Tanzania' (2011) A/HRC/WG.6/12/TZA/1, 3 note 12: 'they include the right to equality and non-discrimination, right to life, right to personal freedom, right to privacy and personal security, right to freedom of movement, freedom of expression, freedom of conscience, right to freedom of religion, right to freedom of association and assembly, right to just remuneration and right own property'.

¹²³ Constitution of the United Republic of Tanzania (adopted 26 April 1977) (CAP. 2) art 9(f).

In addition, Part III of the Constitution enshrines fundamental rights and freedoms for Tanzanian citizens, particularly, the ‘right to freedom of conscience’.¹²⁴ This right encompasses several interconnected freedoms: expression,¹²⁵ religion,¹²⁶ association¹²⁷ and participation in public affairs.¹²⁸ By doing so, the Constitution guarantees individuals the autonomy to think, believe, and act according to their convictions while engaging freely in societal and political life. These rights are foundational to a democratic society and essential for fostering active citizenship, pluralism, and an open civic space. This inclusion in the Constitution underscores Tanzania’s commitment to protecting individual liberties and facilitating meaningful participation in governance and public discourse.

The constitutional guarantees for open civic space are additionally complemented by national policy and legislation. Article 20(1) of the Tanzanian Constitution safeguards the individual’s right to peaceful assembly, association, and the freedom to form or join organisations, providing a lawful foundation for CSOs to operate and advocate within the country. This provision theoretically offers protection against arbitrary state interference by affirming the importance of civic engagement as a cornerstone of democracy and creating a space for dialogue, advocacy, and accountability efforts. In a similar manner, the National Policy on Non-Governmental Organisations 2001 highlights the Tanzanian government’s recognition of NGOs as key development actors capable of complementing state efforts in social and economic transformation through innovation, advocacy, and service provision.¹²⁹ The policy emphasises the need for self-regulation, transparency, accountability, and collaboration among NGOs, the state, and other stakeholders.¹³⁰ It aims to create a conducive and operational environment through robust legal frameworks, decentralised registration processes, and enhanced government-NGO relations. In alignment with this policy, the Non-Governmental Organisations Act (No. 24) 2002 was enacted to provide a framework for the registration, coordination, and regulation of NGO activities, ensuring their alignment with national development goals while addressing accountability and operational standards. Section 25 of

¹²⁴ This right reflects the spirit of the UDHR [Articles 18, 19, and 20(1)], the ICCPR [Articles 18(1), 19(2), 21 and 22(1)], and the ACHPR [Articles 8, 9, 10(1) and 11] which collectively emphasise the protection of freedom of religion, thought, conscience, expression, and association. These freedoms are essential for creating an enabling and conducive environment for CSOs to function effectively, as they provide the foundation for open dialogue, participation in public affairs, and the mobilisation of resources and communities in the pursuit of social justice and accountability.

¹²⁵ art 18.

¹²⁶ art 19.

¹²⁷ art 20.

¹²⁸ art 21.

¹²⁹ The National Policy on Non-Governmental Organisations (NGOs) 2001 Section 3.

¹³⁰ *ibid* Section 4.

the Act establishes the National Council for Non-Governmental Organisations, an umbrella organisation designed to provide a unified forum for coordination, networking, and collaboration among NGOs.¹³¹

3.2 Assessment of an enabling environment for CSOs in Tanzania

While the above measures highlight Tanzania's commitment to safeguarding civic engagement and fostering collaboration, stringent regulatory controls and centralisation of oversight raise concerns about the potential curtailment of CSO autonomy. Tanzania's civic space faces significant legal and political challenges, as the government actively suppresses freedom of expression, association, and assembly¹³² through the implementation of restrictive laws designed to silence dissent and stifle critical voices.¹³³ The NGO Act exemplifies this dynamic, imposing significant state control over CSOs. Its mandatory registration requirement,¹³⁴ coupled with the power of the government-appointed Non-Governmental Organisations Coordination Board to approve, suspend, or cancel registrations,¹³⁵ places CSOs under extensive state oversight. The broad discretion granted to the Board to refuse registration based on vague criteria such as 'public interest' or non-compliance with unspecified laws risks arbitrary decisions that could suppress dissenting or critical voices.¹³⁶ Furthermore, the Act's requirement to submit annual reports and adhere to government-approved codes of conduct¹³⁷ imposes additional bureaucratic burdens and further aligns their operations with state interests. While the NGO Act provides mechanisms for appeal and review, these are also directed through government institutions, raising questions about their impartiality.¹³⁸ Thus, although the Act lays a foundation for enabling CSO operations, its regulatory and compliance demands coupled with the potential for government interference, limit the autonomy of CSOs.

Whereas the NGO Act exemplifies the restrictive regulatory environment faced by CSOs, Tanzania's broader legal and political measures further constrain civic space and limit avenues for accountability. This was particularly evident in Tanzania's withdrawal from the declaration under Article 34(6) of the Protocol to the ACtHPR, which allows individuals and NGOs to

¹³¹ The Non-Governmental Organisations Act No. 24 of 2002.

¹³² Tanzania Human Rights Defenders Coalition (THRDC), 'Situation Report on Human Rights Defenders and Civic Space in Tanzania' (2023) 60.

¹³³ CIVICUS: World Alliance for Citizen Participation and DefendDefenders (East and Horn of Africa Human Rights Defenders Project), 'Tanzania: Joint Submission to the UN Universal Periodic Review - 39th Session of the UPR Working Group' (2021) 2.

¹³⁴ The Non-Governmental Organisations Act (n 129) Section 11.

¹³⁵ *ibid* Section 7.

¹³⁶ *ibid* Section 14.

¹³⁷ *ibid* Sections 27-28.

¹³⁸ *ibid* Sections 15-16.

directly file cases against states at the African Court.¹³⁹ This mechanism is intended to enhance accountability and access to justice by providing a platform for redress when domestic remedies are insufficient or unavailable. However, a state's withdrawal or unacceptance of this declaration restricts such access, effectively nullifying this route to accountability. In 2019, the government of Tanzania withdrew from the declaration,¹⁴⁰ successfully blocking individuals and civil society from challenging human rights violations at the regional level and limiting their capacity to hold the government accountable.

Subsequently, on 10 June 2020, the National Assembly of Tanzania enacted the Written Laws Bill (Miscellaneous Amendments) (No. 3) Act, 2020.¹⁴¹ Specifically, Part III of this Act amends Section 4 of the Basic Rights and Duties Enforcement Act (CAP. 3) 2019, by introducing the requirement that any application alleging a violation of constitutional rights¹⁴² must include an affidavit demonstrating how the violation personally affected the claimant. This provision effectively negates public interest litigation by excluding cases brought on behalf of others or addressing systemic issues, as only those who can prove direct personal harm may initiate such cases.¹⁴³ The inclusion of this personal harm requirement marks a considerable hindrance in CSO efforts to advocate for human rights accountability on favour of victims and communities.¹⁴⁴ Moreover, the amendment further violates customary international law and best practices, which recognise that all persons, 'have the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.'¹⁴⁵ By narrowing the scope of accountability and reducing access to effective remedies, the Act not only erodes public confidence in the legal system but also jeopardises the protection and promotion of human rights in Tanzania.

¹³⁹ Amnesty International, 'Tanzania: Withdrawal of Individual Rights to African Court Will Deepen Repression' (*Amnesty International*, 2 December 2019) <<https://www.amnesty.org/en/latest/press-release/2019/12/tanzania-withdrawal-of-individual-rights-to-african-court-will-deepen-repression/#:~:text=The%20Tanzanian%20government%20has%20withdrawn>> accessed 16 July 2024. It is also imperative to note that while the country has ratified the Protocol to the ACtHPR, it has not domesticated it. See: African Commission on Human and People's Rights, 'Concluding Observations and Recommendations - Tanzania: 2nd to 10th Periodic Report, 1992-2006' (2008).

¹⁴⁰ *ibid.*

¹⁴¹ Amnesty International, 'Tanzania: A Chance to Priorities Human Rights - Amnesty International Submission for the Universal Periodic Review, 39th Session of the UPR Working Group' (2021) 5.

¹⁴² Constitution of the United Republic of Tanzania (n 121) Part III Basic Rights and Duties arts. 12-29.

¹⁴³ Amnesty International, 'Tanzania: Planned Law Amendments to Prevent Solidarity Lawsuits Must Be Rejected' (10 June 2020) <<https://www.amnesty.org/en/latest/news/2020/06/tanzania-planned-law-amendments-to-prevent-solidarity-lawsuits-must-be-rejected/>> accessed 21 September 2024.

¹⁴⁴ CIVICUS: World Alliance for Citizen Participation and DefendDefenders (East and Horn of Africa Human Rights Defenders Project) (n 133) 4.

¹⁴⁵ Universal Declaration of Human Rights (n 33) art 8.

3.3 Domestic prosecution of international crimes in Tanzania

Therefore, if Tanzania has curtailed both domestic and regional mechanisms of accountability, can it be reasonably inferred that similar limitations extend to the prosecution of international crimes within the country? To assess Tanzania's position on the prosecution of international crimes, it is crucial to understand its role in international human rights and criminal law, particularly in Africa. Tanzania has been instrumental in the development of these fields, contributing notably to the development of international human rights and criminal law through its active involvement in several key initiatives. Tanzania's instrumental role is exemplified by its hosting of significant institutions, including the ACtHPR, which is central to promotion and protection of human rights across the continent. Additionally, the EACJ, based in Arusha, addresses legal disputes and ensures adherence to regional laws, including those related to human rights. Furthermore, Tanzania played a crucial role in the International Criminal Tribunal for Rwanda (ICTR), which was established to prosecute those responsible for genocide and other serious violations of international law. The ICTR, which concluded its operations on December 31st, 2015, was a landmark institution in international criminal justice, and Tanzania's hosting of the Tribunal underscored its commitment to addressing grave international crimes. Following the ICTR's closure, Tanzania continued its significant role by hosting the Arusha branch of the United Nations International Residual Mechanism for Criminal Tribunals. This mechanism was established to carry out the residual functions of the ICTR, including the completion of ongoing cases and appeals.¹⁴⁶

Yet, this institutional prominence contrasts sharply with the absence of a corresponding domestic legal framework for the prosecution of international crimes. While Tanzania hosts institutions that embody the ideals of international justice, their presence has not translated into substantive internal reform or incorporation of international criminal law norms. The country's engagement with such institutions remains largely external and procedural rather than internal and transformative. Tanzania has signed and ratified the Rome Statute, making the country a State Party to the ICC.¹⁴⁷ Signature and ratification obligates Tanzania to adhere to principles of international criminal justice, including the investigation and prosecution of international

¹⁴⁶ United Nations International Criminal Tribunal for Rwanda, 'The ICTR in Brief' (*Irmct.org*, 2013) <<https://unictr.irmct.org/en/tribunal>> accessed 16 July 2024.

¹⁴⁷ United Nations Treaty Collection, 'Rome Statute of the International Criminal Court' (*Un.org* 2020) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-10&chapter=18&clang=en> accessed 22 October 2024.

crimes.¹⁴⁸ However, as a dualist state, Tanzania requires both ratification and domestication of international instruments for them to have binding authority within its jurisdiction.¹⁴⁹ As of 2016, the Tanzanian government indicated that it was still ‘assessing the possibility of fully integrating the Rome Statute into domestic legislation.’¹⁵⁰ Internal enactment of the Rome Statute in Tanzania requires parliamentary approval of a legislative act incorporating the Statute’s provisions.¹⁵¹ Without domestic legislation implementing these obligations, the Statute does not possess legal force domestically. As highlighted in chapter two, while the Rome Statute does not explicitly mandate domestication within its provisions, its effectiveness necessitates complete incorporation into domestic legal frameworks. This domestication process is vital for ensuring the Statute’s principles and mechanisms are operationalised at the national level, thereby enabling comprehensive engagement with the international criminal justice system. Consequently, non-domestication bars Tanzania from effectively cooperating with the ICC or prosecuting international crimes within its jurisdiction, thereby undermining its role in the global fight against impunity.

3.4 Tanzanian civil society interventions

Based on the above, Tanzanian CSOs face a dual challenge: navigating an environment hostile to their operations while lacking the legal tools to address international crimes. Nonetheless, these constraints have not entirely stifled civil engagement. On numerous occasions, Tanzanian civil society has found alternative ways to advance their causes through various advocacy campaigns.

3.4.1 Written Laws (Miscellaneous Amendments) (No. 3) Act

Primarily, Tanzanian CSOs have consistently advocated for legislative reforms to create a more enabling legal environment for NGOs, even as they face escalating legal and regulatory constraints disguised as efforts to promote accountability and transparency. The 2019 Written Laws (Miscellaneous Amendments) (No. 3) Act exemplifies this trend by introducing amendments to the NGO Act of 2002 that disproportionately empower the state while undermining CSOs’ operational independence. For instance, the addition of Section 8A to the NGO Act allows for automatic deregistration of organisations that fail to meet the definitional

¹⁴⁸ Vienna Convention on the Law of Treaties, (adopted 23 May 1969, entered into force 27 January 1980) 1115 UNTS 331 art 14.

¹⁴⁹ Constitution of the United Republic of Tanzania (n 123) art 63(e).

¹⁵⁰ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review - United Republic of Tanzania’ (2016) A/HRC/33/12, 4.

¹⁵¹ Kahimba, Ngaiza and Mabula (n 104) 113.

criteria of an NGO under Section 2 of the Act.¹⁵² While ostensibly designed to ensure compliance with legal definitions, this provision lacks objective safeguards, allowing for potentially arbitrary or politically motivated decisions. This threatens the ability of advocacy-oriented and rights-based organisations to operate freely, particularly those critical of state policies or engaged in politically sensitive activities. Similarly, the introduction of a ten-year validity period for NGO Certificates of Registration under Section 17 of the NGO Act imposes a burdensome renewal process.¹⁵³ Failure to renew within six months of expiration renders registration invalid, effectively exposing NGOs to the risks of closure due to administrative delays or resource constraints. Smaller organisations, already constrained by limited capacity, are disproportionately impacted, further marginalising voices that challenge the status quo. Moreover, the reporting requirement under the amended Section 29(1) mandates NGOs to publicly disclose annual reports.¹⁵⁴ While framed as a transparency measure, this provision exacerbates administrative and financial pressures, particularly on resource-strapped organisations. Taken together, these amendments create a legal environment that underscores the state's interest in imposing control rather than fostering a genuinely accountable and thriving civil society. Far from enabling transparency, they reinforce a climate of fear and self-censorship, stifling dissent and curtailing the ability of CSOs to engage in advocacy and human rights work.¹⁵⁵ Such measures reflect broader patterns of authoritarian governance, where regulatory tools are wielded to silence critical voices under the pretext of enforcing the rule of law.

In response to these challenges, the Tanzania Human Rights Defenders Coalition¹⁵⁶ (THRDC) emerges as a critical actor, spearheading efforts to support NGOs navigating this restrictive landscape. Through dialogues, meetings, and training sessions, the THRDC sought to raise awareness among NGOs about their rights and the far-reaching implication of the new regulations.¹⁵⁷ However, these efforts were met with targeted repression, one key example

¹⁵² The Written Laws (Miscellaneous Amendments) (No.3) Act 2019 Section 32.

¹⁵³ *ibid* Section 34.

¹⁵⁴ *ibid* Section 35.

¹⁵⁵ Rogers Rugeiyamu and Ajali Mustafa Nguyahambi, 'Advocacy Non-Governmental Organisations (NGOs) Resiliency to Shrinking Civic Space in Tanzania' (2023) 6 *Journal of Humanities and Applied Social Sciences* 240, 261.

¹⁵⁶ Björn Ternström, Eutropia Ngido and Japhet Makongo, 'Tanzania Human Rights Defenders' Coalition -Mid Term Review Final Report' (Nordic Morning 2021): The Tanzania Human Rights Defenders Coalition is a non-governmental, non-partisan organisation that operates as a membership-based entity dedicated to protecting and promoting the rights of human rights defenders in Tanzania.

¹⁵⁷ TEN MET, 'Compendium of Laws Governing Civil Society Organisations in Tanzania' (20 March 2019) <<https://tenmet.or.tz/compendium-of-laws-governing-civil-society-organisations-in-tanzania/>> accessed 12 July 2024.

being the freezing of the THRDC's bank accounts in August 2020. Acting on a police order sanctioned by government officials,¹⁵⁸ the Coalition's accounts were frozen, forcing the THRDC to table all official undertakings in anticipation of a remedy to the matter.¹⁵⁹ Undoubtedly, such actions instil fear among civil society actors, create an environment where their fundamental rights are routinely violated, and discourages them from engaging in advocacy and public mobilisation.

3.4.2 Media Services Act 2016

Despite this, some civil society advocacy efforts in Tanzania have achieved significant success, the judgment in *Media Council of Tanzania and Others v Attorney-General of the United Republic of Tanzania*¹⁶⁰ is a prominent example. This case represents a critical juncture in the intersection of regional governance and national sovereignty within the East African Community (EAC). It scrutinised the Tanzanian Media Services Act (No. 12) 2016, a law criticised for imposing excessive restrictions on press freedom and freedom of expression, and tested the capacity of the East African Court of Justice (EACJ) to enforce treaty obligations against a Partner State.

The Applicants—the Legal and Human Rights Centre (LHRC), the Media Council of Tanzania (MCT), and the THRDC—argued that several provisions of the Act were incompatible with values of good governance, the rule of law, and the protection of fundamental rights as enshrined in Articles 6(d),¹⁶¹ 7(2),¹⁶² and 8(1)(c)¹⁶³ of the Treaty for the Establishment of the East African Community (EAC Treaty). As a Partner State to the EAC,¹⁶⁴ Tanzania is bound by a commitment to uphold these principles and to avoid actions that undermine the Treaty's objectives.

¹⁵⁸ Tanzania Human Rights Defenders Coalition, 'Cancellation of THRDC's Activities' (*X (formerly Twitter)*), 18 August 2020) <<https://x.com/THRDCOALITION/status/1295662249751830530>> accessed 21 September 2024.

¹⁵⁹ *ibid.*

¹⁶⁰ Reference No 2 of 2017 [2019] EACJ 2.

¹⁶¹ 'The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include: (d) good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.'

¹⁶² 'The Partner States undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.'

¹⁶³ 'The Partner States shall: (1) (c) abstain from any measures likely to jeopardise the achievement of those objectives or the implementation of the provisions of this Treaty.'

¹⁶⁴ The Treaty for the Establishment of the East African Community Act (No. 4) 2001 gives effect to the provisions of the EAC Treaty and for connected purposes in Tanzania.

Filed on 11 January 2017, the case was initiated under Article 30(1) of the EAC Treaty,¹⁶⁵ a provision that allows legal and natural persons to refer a Partner State's legislation to the EACJ for determination if it is unlawful or infringes the Treaty. The Applicants highlighted the vague and overbroad nature of the provisions of the Media Services Act: granting the government authority to revoke media licenses, criminalising 'false news,' mandating journalist accreditation, and imposing harsh penalties for defamation and sedition.¹⁶⁶ These provisions, they contended, were disproportionate and had a chilling effect on journalistic practice, undermining democratic accountability and transparency.

The EACJ's analysis centred on the broader implications of the contested provisions for freedom of expression as a cornerstone of democratic governance. Referencing the Human Rights Committee's General Comment No. 34, the Court affirmed that states must meet a rigorous standard when restricting freedom of expression. Specific evidence must show that the expression poses a clear and immediate threat to a legitimate interest, with restrictions demonstrating necessity and proportionality to ensure they directly address the risk without being arbitrary or excessive.¹⁶⁷

Furthermore, by declaring key provisions of the Act inconsistent with the EAC Treaty,¹⁶⁸ the Court reaffirmed that domestic laws of Partner States must align with regional commitments.¹⁶⁹ This decision underscored the principle that sovereignty does not shield states from adhering to obligations under international or regional frameworks. The ruling also clarified the Court's jurisdiction 'to determine whether the EAC Treaty has been breached or violated,' bolstering the EACJ's role as a guardian of the rule of law within the region.¹⁷⁰

This case is emblematic of the tensions between national sovereignty and regional integration. The Tanzanian government's argument—that the Media Services Act, as a sovereign measure to ensure public order and national security, justifiably balances freedom of expression with public and individual interests—¹⁷¹ reflects a persistent challenge in reconciling domestic

¹⁶⁵ Ndanga Kamau, 'Media Council of Tanzania and Others v Attorney General of the United Republic of Tanzania (East Afr. Ct. J.)' (2020) 59 International Legal Materials 849.

¹⁶⁶ *Media Council of Tanzania and Others v Attorney-General of the United Republic of Tanzania* Reference No 2 of 2017 [2019] EACJ 2 [11].

¹⁶⁷ Human Rights Committee 'General Comment No. 34' (2001) CCPR/C/GC/34, 8.

¹⁶⁸ Sections 7(3)(a), (b), (c), (f), (g), (h), (i), and (j); Sections 19, 20, and 21; Sections 35-40, Sections 50 and 54; Sections 52 and 53; and Sections 58 and 59.

¹⁶⁹ *Media Council of Tanzania and Others v Attorney-General of the United Republic of Tanzania* (n 163) [74].

¹⁷⁰ *ibid* [39]; see also The Treaty for the Establishment of the East African Community (adopted on 30 November 1999 entered into force 7 July 2000) (Amended on 14 December 2006 and on 20 August 2007) art 27.

¹⁷¹ *Media Council of Tanzania and Others v Attorney-General of the United Republic of Tanzania* (n 163) [15(1)].

legislative autonomy with regional obligations. The judgment also carries broader implications for the role of civil society in advancing human rights and accountability within the EAC. By engaging the EACJ, the Applicants demonstrated how civil society can leverage regional mechanisms to challenge restrictive laws and advocate for legitimate reforms.

Ultimately, this decision is not only a victory for press freedom but also a pivotal moment in defining the limits of state power within the EAC's legal framework. It sets a significant precedent for challenging laws that restrict fundamental freedoms across Partner States, positioning the EACJ as a key actor in harmonising national legislation with regional human rights commitments. After a series of legal challenges and external pressure, the Media Services Act was amended in January 2023. The amendments were regarded as a significant advancement in improving the legal environment of freedom of expression in Tanzania, though concerns remained about other restrictive aspects of the Act.¹⁷²

3.5 The Universal Periodic Review and the shrinking civic space in Tanzania: challenges and commitments

Given the severe constraints on civic space, the situation in Tanzania has drawn international attention, a prominent example is the Universal Periodic Review (UPR). The UPR is a key tool of the United Nations Human Rights Council that offers a forum for evaluating the human rights practices of Member States,¹⁷³ including Tanzania. It is a relatively new mechanism, with each country undergoing a review every four and a half years, since 2008.¹⁷⁴ This mechanism consists of three stages: 'first, the assessment of the human rights situation of the state under review (SuR); second, the implementation of the recommendations and voluntary pledges made by the SuR; and third, the reporting at the next review on the progress made in implementing the recommendations and pledges related to the country's human rights situation.'¹⁷⁵

Tanzania's inaugural review took place on 3 October 2011,¹⁷⁶ providing the country with an opportunity for both international scrutiny and domestic reflection. In this session, Tanzania received recommendations, of which 107 were accepted in full, 44 were rejected and two were

¹⁷² Media Council of Tanzania, 'CoRI Pushes for More Amendments of MSA 2016' (*mct.or.tz* 2024) <<https://mct.or.tz/msaamendments/>> accessed 16 July 2024.

¹⁷³ Commonwealth Human Rights Initiative, 'Tanzania under Review by United Nations Universal Periodic Review: Recommendations Regarding Justice Matters' 1.

¹⁷⁴ *ibid.*

¹⁷⁵ Tanzania Human Rights Defenders Coalition (THRDC), 'Universal Periodic Review Implementation Report: Implementation Status of the 107 Accepted Tanzania UPR Recommendations' (2015) 1.

¹⁷⁶ Marianne Wiben Jensen, 'Iwgia Report on the Tanzania UPR Process' (2011) 1.

left for consideration.¹⁷⁷ Overall, only 10 of the recommendations have been fully realised, 66 partially achieved, and 31 have not been addressed at all, raising concerns about the government's commitment and willingness to follow through on the UPR process.¹⁷⁸

Five of those recommendations addressed freedom of information and expression. According to the THRDC,¹⁷⁹ the first one recommended guaranteeing human rights defenders, political opponents, and journalists the freedom of expression, association, and assembly, in line with international human rights principles. The second recommendation emphasised the need to collaborate with the media and other stakeholders to make sure that all state organs are fully conscious of the constitutional guarantees of press freedom and the right to assembly. The third and fourth recommendations called for the adoption of new legislation that enshrined freedom of the press and guaranteed the public's right to information. Lastly, the fifth recommendation highlighted the significance of respecting the right to freedom of assembly throughout the constitutional review process. While some steps have been taken to realise these recommendations, their full implementation has been uneven.

Building on the above, during the second UPR cycle, the government of Tanzania received 15 recommendations specifically relating to civic space.¹⁸⁰ Of these, four were accepted, 11 were noted, and out of those figures, only three of the recommendations have actually been implemented.¹⁸¹ Essentially, it was advised that the state implement suitable measures to fully realise the right to freedom of association and assembly, create an enabling environment for CSOs, protect HRDs, journalists, and civil society representatives, and address concerns regarding freedom of opinion and expression, including access to information.¹⁸²

Furthermore, in the *Summary of Stakeholders' Submissions on United Republic of Tanzania*, prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the Thirty-ninth Session of the Human Rights Council Working Group on the UPR—Tanzania's third UPR cycle held from 1 to 12 November, 2021—several findings were drawn regarding Tanzania's civic space. This report synthesises input from diverse stakeholders, including CSOs, advocacy groups, and human rights defenders, highlighting critical issues affecting human rights in Tanzania. Notable contributors to the report included organisations

¹⁷⁷ THRDC (n 175).

¹⁷⁸ *ibid* 3.

¹⁷⁹ *ibid*.

¹⁸⁰ CIVICUS: World Alliance for Citizen Participation and DefendDefenders (East and Horn of Africa Human Rights Defenders Project (n 133) 2.

¹⁸¹ *ibid*.

¹⁸² CIVICUS (n 133) pgs. 3, 6, 8, and 11.

such as AI, the American Bar Association Centre for Human Rights, and ADF International, together with regional and local actors like the THRDC and the Southern African Litigation Centre. Joint submissions provided a collaborative perspective, with contributions from CIVICUS and the East and Horn of Africa Human Rights Defenders Project, among others. These stakeholders examined Tanzania's adherence to its human rights commitments, focusing on the implementation of recommendations and broader concerns about legislative and institutional developments since previous reviews. Their findings revealed a significant deterioration in Tanzania's civic space, with persistent difficulties to media freedom, freedom of expression, and the rights of civil society.¹⁸³ Despite Tanzania's constitutional guarantees, commitments and assertions during previous UPR cycles that a conducive environment for CSOs was already in place,¹⁸⁴ and despite receiving recommendations in all three cycles to safeguard the ability of these organisations to operate without fear of violence, threats, reprisals, discrimination, or undue pressure from both government and non-governmental actors, the operational space for CSOs has continued to shrink. These ongoing challenges not only contradict the Tanzanian government's commitment under human rights frameworks but also raises serious concerns about its willingness to foster a genuinely supportive framework for human rights advocacy and civic engagement.

3.6 Conclusion

The exploration of Tanzania's legal framework highlights a complex interplay between the country's commitments to international human rights and the realities of its domestic implementation. While Tanzania has made significant strides in aligning its constitutional provisions and policy frameworks with international standards this progress has been undermined by restrictive legislative measures and regulatory frameworks. The NGO Act, the Written Laws Bill (Miscellaneous Amendments) Act, and the withdrawal from the ACtHPR's individual and NGO complaint mechanism exemplify a troubling trend of shrinking civic space and heightened state control.

The challenges faced by CSOs in navigating these restrictions underscore the tension between the state's interest in preserving authority and the critical role of CSOs in advocating for accountability and human rights. Despite these constraints, Tanzanian CSOs have demonstrated resilience, leveraging regional mechanisms such as the EACJ to challenge

¹⁸³ Human Rights Council, 'Summary of Stakeholders' Submissions on United Republic of Tanzania' (2021) A/HRC/WG.6/39/TZA/3, pgs. 5-7.

¹⁸⁴ *ibid.*

draconian laws like the Media Services Act and secure judicial victories that reaffirm principles of good governance and freedom of expression. These successes highlight the potential of strategic litigation and regional advocacy in countering domestic legal barriers.

Moreover, Tanzania's failure to domesticate the Rome Statute raises broader questions about its pledge to international criminal justice. The absence of domestic legislation to prosecute international crimes not only hampers Tanzania's ability to meet its responsibilities under the Rome Statute but also limits the avenues available for CSOs to pursue justice for victims of grave human rights violations.

This chapter demonstrates that while Tanzania's legal and institutional framework lays a foundation for promoting human rights and supporting civil society, its current trajectory reflects a pattern of selective engagement with international norms. Legislative reforms and robust protections for civic space are imperative for Tanzania to reconcile its domestic practices with its international obligations and to ensure that civil society can effectively contribute to the fight against impunity and the advancement of justice.

Chapter Four

The challenges faced by Tanzania in harmonising its domestic governance with its international commitments invite a reflection on how other African nations have approached similar dilemmas. Notably, South Africa's post-apartheid transition offers a compelling comparison. Emerging from a legacy of systemic oppression, South Africa embraced democratic governance in 1994, embarking on a journey to integrate international human rights principles into its domestic framework while confronting its own complex socio-political realities. Sohn classifies this transition as an instance where the 'United Nations had to force South Africa to abandon its apartheid policy and to accept a democratic electoral system.'¹⁸⁵ Albeit unintentional, South Africa's struggle against apartheid substantially influenced the evolution of international law, particularly the principles aimed at the prohibition of apartheid and racism.¹⁸⁶ Moreover, the global condemnation of apartheid policies, exemplified by the numerous UN resolutions opposing the apartheid regime,¹⁸⁷ underscored the broader pursuit of racial equality and self-governance. This chapter explores South Africa's constitutional protections for civil society and assesses the strengths and limitations of South Africa's legal environment in enabling CSOs to promote accountability, highlighting both supportive legal mechanisms and challenges.

4.1 Constitutional and legal guarantees of an enabling environment for CSOs in South Africa

On 3 October 1994 South Africa signed both the ICCPR¹⁸⁸ and the ICESCR,¹⁸⁹ signalling its commitment to a comprehensive range of human rights. It formally ratified the ICCPR on 10 December 1998¹⁹⁰ and later acceded to the Second Optional Protocol to the ICCPR, which aims to abolish capital punishment, on 28 August 2002.¹⁹¹ However, it was not until 12 January 2015

¹⁸⁵ Louis B Sohn, *Rights in Conflict: The United Nations & South Africa* (Transnational Publishers 1994).

¹⁸⁶ Kevin Hopkins, 'Assessing the World's Response to Apartheid: A Historical Account of International Law and Its Part in the South African Transformation Recommended Citation' (2015) 10 University of Miami International and Comparative Law Review 241, 250.

¹⁸⁷ *ibid* 251.

¹⁸⁸ United Nations Treaty Collection, 'International Covenant on Civil and Political Rights' (n 114).

¹⁸⁹ United Nations Treaty Collection, 'International Covenant on Economic, Social and Cultural Rights' (*Un.org* 2009) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en> accessed 22 October 2024.

¹⁹⁰ United Nations Treaty Collection, 'International Covenant on Civil and Political Rights' (n 114).

¹⁹¹ United Nations Treaty Body Database, 'Ratification Status for South Africa' (*Ohchr.org* 2019) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=162&Lang=EN> accessed 22 October 2024.

that South Africa ratified the ICESCR, thereby affirming its recognition of economic, social, and cultural rights.¹⁹²

Together with the UDHR—which, although not formally signed or ratified, has attained binding status as customary international law—¹⁹³these instruments form the foundation of South Africa’s Bill of Rights. Enshrined in Chapter 2 of the Constitution of the Republic of South Africa 1996, South Africa’s Bill of Rights, embodies a transformative redefinition and expression of human rights norms, serving both as a reflection of the global human rights struggle and as a product of its impact.¹⁹⁴ It incorporates numerous provisions that engage with international law in various respects.¹⁹⁵ It is notably comprehensive and grounded in the principle that ‘all rights are reciprocal, indivisible, and interconnected, with civil and political rights augmenting social and economic rights.’¹⁹⁶ This recognition rejects the idea of prioritising or categorising certain rights over others, instead it advocates for a view that sees all rights as essential to achieving human dignity and equity.¹⁹⁷

Additionally, the Constitution integrates international law by mandating that South African courts take international law into account in their deliberations¹⁹⁸ and prioritise interpretations of legislation that align with international law, provided such interpretations are reasonable.¹⁹⁹ If there is an alternative interpretation that contradicts international law, the court must adopt the interpretation that aligns with international law.²⁰⁰ In this context, the South African Constitution exemplifies a transformative tactic to integrating international human rights standards into domestic law. This requirement ensures that South Africa’s legal framework not only adheres to global human rights norms but also advances them. The Constitution’s integration of international human rights principles reflects a dedication to upholding a wide array of rights that were central to its struggle against apartheid.

¹⁹² United Nations Treaty Collection, ‘International Covenant on Economic, Social and Cultural Rights’ (n 186).

¹⁹³ United Nations, ‘Research Guides: UN Documentation: Human Rights: Universal Declaration of Human Rights’ (Un.org 2018) <<https://research.un.org/en/docs/humanrights/undhr>> accessed 22 October 2024.

¹⁹⁴ Penelope Andrews, ‘Incorporating International Human Rights Law in National Constitutions: The South African Experience’ (2008) 1291 *Articles & Chapters* 835.

¹⁹⁵ John Dugard, ‘International Law and the “Final” Constitution’ (1995) 11 *South African Journal on Human Rights* 241.

¹⁹⁶ Andrews (n 194) 840.

¹⁹⁷ Pierre De Vos, ‘Pious Wishes or Directly Enforceable Human Rights?: Social and Economic Rights in South Africa’s 1996 Constitution’ (1997) 13 *South African Journal on Human Rights* 67, 70.

¹⁹⁸ Constitution of the Republic of South Africa, 1996 Chapter 2: Bill of Rights Section 39(1)(b).

¹⁹⁹ *ibid* Section 233.

²⁰⁰ *ibid*.

The legal framework governing CSOs in South Africa is shaped by the same constitutional principles that emphasise the protection of civil, political, and socio-economic rights. This framework not only ensures the operational autonomy of CSOs but also provides avenues for them to challenge governmental actions and policies, ensuring that the state remains accountable to both national and international law. For example, the Nonprofit Organisations (NPO) Act [No. 71 of 1997], which came into effect on 1 September 1998, reflects a significant legislative commitment ‘to encourage and support NPOs in addressing the diverse needs of the population by fostering a conducive environment for their operation.’²⁰¹

The Act is divided into five chapters, of which Chapter 2 is particularly significant in the context of regulating and supporting NPOs. The chapter establishes a legislative framework aimed at fostering a supportive environment for NPOs to function effectively. A key provision within this chapter is Section 3, which recognises the state’s role in promoting and strengthening civil society.²⁰² Section 3 mandates that ‘within the limits prescribed by law, every organ of state must determine and coordinate the implementation of its policies and measures in a manner designed to promote, support, and enhance the capacity of NPOs to perform their functions.’²⁰³ This provision places a positive obligation on government institutions to facilitate an enabling environment for NPOs, ensuring that state policies and regulatory measures are designed not to hinder but actively support the work of non-profit organisations. It enhances legal certainty and reinforces NPO legitimacy as key actors in social and economic development. This provision is a progressive legislative step that creates a legal basis for holding the state accountable when policies or administrative actions undermine the operational effectiveness of NPOs. Moreover, by fostering a cooperative relationship between the state and civil society, Section 3 contributes to the broader democratic objective of ensuring active civic engagement, transparency, and inclusivity in governance.

Governed by the Minister of the Department of Social Development,²⁰⁴ the Act aims to provide a stable and accessible legal framework for the non-profit sector by facilitating registration and

²⁰¹ Nonprofit Organisations (NPO) Act [No. 71 of 1997] Chapter 1 Section 2.

²⁰² Ricardo G Wyngaard, ‘The South African NPO Crisis: Time to Join Hands Changing Legal Environments for Civil Society Organisations’ (2013) 15 *International Journal of Not-for-Profit Law* 5, 6.

²⁰³ Chapter 2, Creation of an Enabling Environment Section 3.

²⁰⁴ SB Bhat and D Hartmann, ‘A Review of the Procedures and Processes to Start-up a Non-Profit Organisation (NPO) under South African Law with Special Reference to the NPO Act 71 of 1997 (the NPO Act)’ (Paper 2014) 2.

accountability.²⁰⁵ Although it does not mandate organisation registration, official accreditation offers related benefits.²⁰⁶ The Act caters to ‘dispute resolutions, cancellations, financial year-end reporting requirements, and consequences for offences committed,’ and through it registered NPOs can legally source financial assistance by either fundraising or applying for tax exemptions.²⁰⁷ By providing this robust foundation for non-profit operations, the NPO Act not only legitimises them, it also empowers civil society to actively engage in critical functions such as drawing attention to government failures and engaging in strategic litigation with the aim of safeguarding and bolstering the fulfilment of constitutional rights.²⁰⁸

The NPO Act also sets up an official unit in government, within the Department of Social Development to administer support to initiatives in South African civic space, known as the Directorate for Nonprofit Organisations (DNPO).²⁰⁹ The Directorate is responsible for promoting effective governance and policy development for non-profit organisations by facilitating the creation and execution of policies and programs aimed at improving governance standards and fostering collaboration through multi-sectoral and multi-disciplinary initiatives.²¹⁰ Among these, the Directorate also acts as the central regulatory authority for NPOs by keeping an accurate and current record of their status, ensuring transparency through the publication of annual updates, facilitating public access to key organisational information, and collaborating with the Minister of Finance and the Financial Intelligence Centre to align regulatory and financial oversight measures.²¹¹ In its capacity, the DNPO takes several actions to support NPOs under the framework of the Act. These efforts encompass conducting research studies, implementing capacity-building initiatives, and providing an online platform for streamlined registration and reporting.²¹² Additionally, guidelines for good governance and user-friendly registration templates have been developed to assist organisations in meeting their legal and administrative obligations.²¹³ Together, these measures aim to enhance the

²⁰⁵ United States Agency for International Development, Bureau for Democracy Conflict and Humanitarian Assistance and Center of Excellence on Democracy, Human Rights and Governance, ‘2021 Civil Society Organisations Sustainability Index’ (2021) 2.

²⁰⁶ *ibid* 3.

²⁰⁷ Bhat and Hartmann (n 204).

²⁰⁸ S Ngandu and S Mtola, ‘Typologies of Civil Society in South Africa: A Critical Review and Analysis of the Characteristics of the Non-Profit Sector: Final Report’ (2019).

²⁰⁹ Chapter 2 Section 4.

²¹⁰ *ibid* Section 5.

²¹¹ Nonprofit Organisations (NPO) Act (n 197) Chapter 3 Section 24.

²¹² Wyngaard (n 199).

²¹³ *ibid*.

effectiveness, accountability, and compliance of NPOs, fostering a more robust and efficient non-profit sector.

In addition to the NPO Act's directive of empowering and assisting NPOs, South Africa's National Development Act of 1998 establishes a National Development Agency (NDA) 'aimed at promoting an appropriate and sustainable partnership between the Government and civil society organisations to eradicate poverty and its causes.'²¹⁴ The NDA serves as both an enabler and advocate for development: it empowers CSOs through funding and capacity-building support—directly addressing poverty at the grass-root level—and it influences broader development through research, dialogue, and promotion of debates, ensuring systemic and sustainable change.²¹⁵ This dual focus underscores the NDA's pivotal position in bridging immediate needs and long-term development goals, with civil society at the heart of its strategy.

Furthermore, national policy also capacitates the development of CSOs in South Africa.²¹⁶ The adoption of the National Development Plan (NDP) in 2012 by the country's Cabinet represents a pivotal moment in national policymaking, marking a shift towards long-term, strategic planning for sustainable development.²¹⁷ The NDP endorses an inclusive and collaborative vision in achieving developmental goals. It acknowledges that while the state is responsible for service delivery, it lacks the capacity to meet these objectives on its own, highlighting the need for partnerships with non-state actors, including CSOs.²¹⁸ By redefining the role of CSOs as partners in social transformation rather than oppositional players, the NDP promotes a constructive relationship between the state and civil society.²¹⁹ Importantly, it goes beyond mere recognition of CSO potential by calling for the development of systematic and purposeful processes to foster collaboration across stakeholder groups.²²⁰ This structured approach ensures that partnerships are not ad hoc but embedded in the developmental framework. Furthermore, the NDP emphasises the unique contributions of CSOs, such as innovations, skills, experience, and insights, which can complement government efforts and enhance governmental outcomes.²²¹ Through this vision, the NDP positions development as a collective endeavour

²¹⁴ National Development Agency Act [No. 108 of 1998].

²¹⁵ *ibid.*

²¹⁶ *ibid.*

²¹⁷ The Department of Military Veterans, 'National Development Plan 2030' (20 December 2024) <<http://www.dmv.gov.za/documents/national-development-plan.htm>> accessed 22 December 2024.

²¹⁸ Ngandu and Mtola (n 208).

²¹⁹ John Volmink and Lynn Van Der Elst, 'The Evolving Role of 21 St Century Education NGOs in South Africa: Challenges and Opportunities' (Paper 2017).

²²⁰ Ngandu and Mtola (n 208) 24.

²²¹ National Planning Commission, 'National Development Plan 2030 Our Future-Make It Work' (2012).

where the roles of government, CSOs, and other stakeholders are complementary and mutually reinforcing. This approach reflects a commitment to inclusive and sustainable development by leveraging the strengths of all actors involved.

As a result, CSOs in South Africa have succeeded in holding the government accountable and promoting social justice, with their influence extending across various issues. For example, Sonke Gender Justice has led efforts to tackle the widespread issue of gender-based violence, championing structural reforms and community-driven approaches to prevent violence against women and children.²²² Similarly, Lawyers for Human Rights has engaged in litigation to defend marginalised populations, including refugees and landless people, often challenging government policies that undermine constitutional rights.²²³ Likewise, the Treatment Action Campaign (TAC) has used public mobilisation to effect tangible policy changes, particularly in advancing healthcare rights during the HIV/AIDS crisis.²²⁴ TAC's activism led to significant reforms in the government's approach to HIV treatment, securing life-saving antiretroviral drugs for millions of South Africans and reshaping healthcare policy.²²⁵ These organisations demonstrate the essential role of civil society in bridging gaps where state action is inadequate, fostering social justice, and ensuring government accountability.

4.2 Assessment of an enabling environment for CSOs in South Africa

Against this background, it can be argued that the government of South Africa has made significant strides toward achieving an enabling environment for CSOs. These advances are reflected in the adoption of progressive legal frameworks aimed at fostering civil society participation and safeguarding civic freedoms. However, significant legal and administrative inefficiencies hinder the full realisation of these initiatives, limiting their practical effectiveness and impact on the ground.²²⁶ This contradiction is further underscored by findings from the CIVICUS²²⁷ Monitor, which has classified South Africa's civic space as 'obstructed.'²²⁸ This

²²² Sonke Gender Justice, 'About Us' (2011) <https://gend_erjustice.org.za/about-us/about-sonke/> accessed 25 September 2024.

²²³ Lawyers for Human Rights, 'About Us' <<https://www.lhr.org.za/about-us/>> accessed 25 September 2024.

²²⁴ Treatment Action Campaign, 'About Us' <<https://www.tac.org.za/about/>> accessed 25 September 2024.

²²⁵ *Minister of Health and Others v Treatment Action Campaign and Others* (No 2) (CCT8/02) [2002] ZACC 15.

²²⁶ Human Rights Institute of South Africa (HURISA), 'Enabling Environment National Assessment: South Africa Country Report' (2018) 12.

²²⁷ CIVICUS: World Alliance for Citizen Participation, 'State of Civil Society 2011' (2012): CIVICUS is a key player in defending, promoting, and strengthening civil society and citizen participation worldwide. It acts as a supporter, facilitator, advocate, and alliance-builder, focusing particularly on areas where democratic freedoms are under threat.

²²⁸ CIVICUS: World Alliance for Citizen Participation, Human Rights Institute of South Africa (HURISA) and Centre for the Study of Violence and Reconciliation (CSVR), 'Republic of South Africa: Joint Submission to the UN Universal Periodic Review - 41st Session of the UPR Working Group' (2022) 3.

obstruction is marked by increasing state repression against CSOs, reflecting a growing tension between civil society activism and governmental resistance to external oversight. The state's actions—characterised by surveillance, coercion, and the enforcement of restrictive laws—‘demonstrate an increasing degree of intolerance toward radical or unconventional critiques of governmental policies.’²²⁹

For instance, bureaucratic inefficiencies and inadequate capacity within the DNPO highlight a dysfunctionality that often results in prolonged delays in processing registrations that hamper organisations' ability to secure resources and impede their formation and performance.²³⁰ While the Directorate has taken steps to increase public awareness and provide guidelines for compliance, these measures are insufficient to address the structural and operational inefficiencies that persist. Likewise, the rights to freedom of assembly and expression, which while constitutionally guaranteed, are often undermined in practice. For example, the Regulation of Gatherings Act [No. 205 of 1993], originally intended to regulate public demonstrations and maintain public order, has become a tool for curtailing civic engagement.²³¹ Its application often stifles dissent by creating procedural and logistical barriers for individuals and groups wishing to organise or participate in public demonstrations such as notifying authorities about their events.²³² Although the Act does not explicitly require ‘permission,’ it mandates that local municipalities or relevant authorities must be notified at least seven days before the event so as to allow them to prepare for public safety and traffic management. Yet, in practice, local authorities have interpreted the notification requirement for public gatherings into a process of granting permission, frequently denying it for reasons related to national security or public order.²³³ This use of the Act exemplifies how legal instruments can be wielded to suppress civil society's voice rather than empower it. The misapplication of the law effectively restricts the right to assembly, as safeguarded under Section 17 of the South African Constitution, which protects peaceful and unarmed demonstration.

²²⁹ Human Rights Institute of South Africa (HURISA) (n 226).

²³⁰ CIVICUS: World Alliance for Citizen Participation, Human Rights Institute of South Africa (HURISA) and Centre for the Study of Violence and Reconciliation (CSV) (n 228).

²³¹ Busisiwe Zasekhaya and others, ‘The State of Protest Report: Right2Protest Project Report on the State of Protest in South Africa’ (2020) 11.

²³² Regulation of Gatherings Act [No. 205 of 1993] Chapter 1 Section 3.

²³³ Andrew Firmin, ‘Contested and under Pressure: A Snapshot of the Enabling Environment of Civil Society in 22 Countries’ (Ine Van Severen ed, 2017) 21; see also S Ngandu and S Mtola, ‘Typologies of Civil Society in South Africa: A Critical Review and Analysis of the Characteristics of the Non-Profit Sector: Final Report’ (2019) 26.

Thus, a paradox emerges in South Africa's governance landscape: while the country boasts a progressive legal framework that ostensibly supports civil society and encourages participation, the administrative and political environment actively undermines these freedoms. Bureaucratic inefficiencies, coupled with a restrictive and increasingly repressive civic space, limit the ability of CSOs to operate effectively and fulfil their crucial role in advancing accountability, transparency, and social justice. This duality highlights the gap between legislative intent and on-the-ground realities, underscoring the need for deeper reforms to align South Africa's progressive legal commitments with its political and administrative practices.

4.3 Domestic prosecution of international crimes in South Africa

The government of South Africa has had a proactive role in establishing a comprehensive framework that supports CSOs through various measures.²³⁴ Even so, this raises a critical question: has South Africa extended this commitment to creating a legal framework that effectively facilitates the domestic prosecution of international crimes?

Similar to Tanzania, South Africa operates as a dualist state, meaning that for international treaties to have domestic legal effect, they must be incorporated into national law through a process of domestication. However, unlike Tanzania, where the Rome Statute of the ICC has not been fully domesticated, South Africa has made considerable progress to integrate the Statute into its legal framework. This integration was achieved through the enactment of the Implementation of the Rome Statute of the International Criminal Court Act [No. 27 of 2002] (SA ICC Act).²³⁵ The Act ensures that the principles, obligations, and provisions of the Rome Statute are not only recognised in South African domestic law but also enforceable. This domestication represents a strong legislative commitment to dealing with international crimes within the domestic legal system, while ensuring South Africa's legal framework is in conformity with its international obligations under the Rome Statute.

Primarily, the implementation of the SA ICC Act established South Africa's jurisdiction over international crimes.²³⁶ The preamble of the SA ICC Act reflects South Africa's dedication to ensuring that individuals who commit atrocities are brought to justice within its domestic legal framework. One of the primary objectives of the Act is to establish a comprehensive legal structure that facilitates the effective implementation of the Rome Statute within South

²³⁴ Ngandu and Mtola (n 208) 24.

²³⁵ Max du Plessis, 'South Africa's International Criminal Court Act Countering Genocide, War Crimes and Crimes against Humanity' (ISS Paper 172 2008).

²³⁶ Implementation of the Rome Statute of the International Criminal Court Act [No. 27 of 2002] Section 4.

Africa.²³⁷ Second, the SA ICC Act seeks to align South Africa's actions with its duty to prosecute individuals responsible for crimes against humanity.²³⁸ Lastly, the Act empowers South Africa's National Prosecuting Authority²³⁹ (NPA) to prosecute those accused of crimes against humanity and enables the country's courts to adjudicate such cases, both those committed within the country or beyond its borders.²⁴⁰

Du Plessis explains how South Africa's ICC Act incorporates a form of 'conditional universal jurisdiction' that enables its courts to prosecute crimes under the ICC.²⁴¹ The Act enables South African courts to act as surrogates for the ICC in prosecuting international crimes, provided that the suspect is physically present in South Africa after the crime has been committed. This is established under Section 4(3)(c) of the ICC Act. He contrasts this with 'absolute universal jurisdiction,' a concept in international law where a country can prosecute certain crimes regardless of the suspect's presence in its territory.²⁴²

4.4 South African civil society interventions

Following the enactment of the SA ICC Act, South African CSOs have actively leveraged this legislative framework to ensure the state upholds its international obligations under the Rome Statute. They have done so by employing two primary strategies: submitting evidence dockets to the NPA and initiating legal processes to secure arrest warrants for foreign officials accused of international crimes.²⁴³ These actions have compelled South African authorities to investigate alleged international crimes, reinforcing the state's adherence to its international obligations. A particularly notable aspect of this engagement is the use of Section 4(3)(c) of the SA ICC Act. This provision has profoundly enhanced the capacity of CSOs to pursue justice for victims of international crimes occurring outside South Africa's borders. By invoking this

²³⁷ *ibid* Section 3(a).

²³⁸ Section 3(b).

²³⁹ Iole Matthews, 'The National Prosecuting Authority' in Chandré Gould (ed), *Criminal (in)justice in South Africa: A Civil Society Perspective* (Institute for Security Studies 2009): Section 179 of the 1996 South African Constitution established a single, unified prosecuting authority for the country. This constitutional provision was operationalised by the National Prosecuting Authority Act [No. 32 of 1998], which provided the legal framework for the creation and functioning of the National Prosecuting Authority. Together, the Constitution and the NPA Act grant the prosecuting authority power to institute criminal proceedings on behalf of the state and to undertake any necessary actions related to this mandate, ensuring justice is served through the fair and impartial prosecution of offenders.

²⁴⁰ Implementation of the Rome Statute of the International Criminal Court Act (n 233) Section 3(d).

²⁴¹ Du Plessis (n 235) 4.

²⁴² *ibid*.

²⁴³ Hannah Woolaver, 'Partners in Complementarity: The Role of Civil Society in the Investigation and Prosecution of International Crimes in South Africa' in Sarah Williams and Hannah Woolaver (eds), *Civil Society and International Criminal Justice in Africa: Challenges and Opportunities* (Faculty of Law, University of Cape Town 2016) 138.

mechanism, CSOs have prompted official investigations and, in some instances, have led to landmark judicial decisions under the Act.²⁴⁴ It is imperative to note that numerous cases could have been examined in this analysis, however, this minor dissertation focuses on the *Zimbabwe Torture Docket* and the case of former Sudanese president Omar al Bashir. A comprehensive treatment of all relevant cases would have rendered the study analytically unwieldy and beyond its practical scope. The selected cases were therefore chosen for their illustrative value, as they most effectively capture and advance the core arguments and objectives of the research.

4.4.1 The Zimbabwe Torture Docket²⁴⁵

A prominent use of the SA ICC Act by civil society was the request for South Africa's NPA to pursue legal recourse against claims of torture perpetrated 'in Zimbabwe, by Zimbabweans, against Zimbabwean victims'.²⁴⁶ Characterised as the '*Torture Docket*' case, this request resulted in three separate judgements, including one from the Constitutional Court, all substantiating an advanced nuance to the principle of complementarity and underscoring the central role of civil society in promoting accountability for international crimes at the national level.²⁴⁷

The *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre and Another*²⁴⁸ (*Torture Docket*) originated from a docket submitted to the Priority Crimes Litigation Unit (PCLU) of South Africa's NPA on 16 March 2008. This docket detailed instances of torture perpetrated in Zimbabwe during an incursion conducted by the Zimbabwean police at the command post of the opposition party known as: Movement for Democratic Change, on 28 March 2007. It argued that the torture was not isolated but systematic, as part of a broader assault on civilians executed in accordance with state policy—elements that satisfy the criteria for crimes against humanity under Article 7 of the Rome Statute.²⁴⁹ The docket also requested for an investigation into the alleged crime of torture that extended beyond holding the Zimbabwean police officers directly involved accountable. It

²⁴⁴ *ibid* 139.

²⁴⁵ This section outlines the facts of the case as drawn from paragraphs 9-17 of the *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre and Another* (CCT 02/14) [2014] ZACC 30.

²⁴⁶ Max du Plessis and Christopher Gevers, 'Civil Society, "Positive Complementarity" and the "Torture Docket" Case' in Sarah Williams and Hannah Woolaver (eds), *Civil Society and International Criminal Justice in Africa: Challenges and Opportunities* (Faculty of Law, University of Cape Town 2016).

²⁴⁷ Angela Mudukuti, 'The Zimbabwe Torture Case: Reflections on Domestic Litigation for International Crimes in Africa' in Sarah Williams and Hannah Woolaver (eds), *Civil Society and International Criminal Justice in Africa: Challenges and Opportunities* (Faculty of Law, University of Cape Town 2016) 288.

²⁴⁸ (CCT 02/14) [2014] ZACC 30.

²⁴⁹ Christopher Gevers, 'Southern Africa Litigation Centre & Another v National Director of Public Prosecutions & Others: Note' (2013) 130 *The South African Law Journal* 293.

sought to investigate their superiors within the police force and government as those bearing individual accountability for the alleged torture under the principle of ‘command responsibility’.²⁵⁰ Notably, the docket highlighted that these officials frequently travelled to South Africa for official and personal reasons.²⁵¹ Based on this information, the Southern African Human Rights Litigation Centre²⁵² (SALC) requested that the NPA look into and, if necessary, initiate proceedings under Section 4 of the SA ICC Act, invoking universal jurisdiction.

SALC faced significant delays after submitting the torture docket to the NPA. Despite their efforts to prompt action, it took over eight months for the then Acting National Director of Public Prosecutions (NDPP), Advocate Mpshe SC, to respond. He explained that the allegations in the docket needed to be reviewed by the South African Police Service (SAPS) before the NPA could proceed and referred the matter to the then Acting National Commissioner of SAPS, Mr. Tim Williams. Frustrated by the lack of progress, SALC expressed its disappointment and restated its offer to help identify and transfer witnesses from Zimbabwe, urging a decision by 30 January 2009. However, only Advocate Anton Ackerman from the PCLU responded, merely reiterating that the matter was under SAPS review. In April 2009, SALC sent a final letter to the NPA, SAPS, and other officials, setting a deadline of 1 May 2009, for a decision. This deadline passed without a response. Finally, in June 2009, the NDPP informed SALC that SAPS had decided not to investigate the matter. Mr. Williams justified this decision by stating that the case had not been adequately investigated initially and that continuing the investigation would be ‘impractical, legally uncertain, and nearly impossible to carry out.’²⁵³

As aforementioned, the outcome of the case progressed through three judicial levels—the High Court (HC), the Supreme Court of Appeal (SCA), and the Constitutional Court (CC)—each refining the decision and providing greater clarity on South Africa’s obligations under domestic

²⁵⁰ *Prosecutor v Zejnil Delalic, Zdravko Mucic (aka ‘PAVO’), Hazim Delic and Esad Landžo (aka ‘ZENGA’)* (‘ELEBICI Case’) (Appeals Chamber) IT-96-21-A ICTY [198].

²⁵¹ Gevers (n 249) 296.

²⁵² Southern Africa Litigation Centre, ‘Home’ <<https://www.southernafricalitigationcentre.org/>> accessed 6 June 2024; SALC is an organisation that uses strategic litigation as a tool to address systemic injustices and its commitment to empowering lawyers and grass-roots organisations through capacity-strengthening initiatives, fostering a collaborative approach to advancing justice in the region.

²⁵³ *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre and Another* (CCT 02/14) [2014] (ZACC 30) [15].

and international law.²⁵⁴ In the HC, SALC and the Zimbabwean Exiles Forum²⁵⁵ successfully applied for a review of the decision not to investigate the allegations of torture. The Court not only set aside the decisions of the NDPP, the Head of the PCLU, and the National Commissioner, it was also found that the decision was incompatible to the Constitution and South Africa's international legal obligations. The HC went beyond the original relief sought, expanding its order after inviting proposals from the parties.

On appeal, the SCA upheld the HC's decision but significantly simplified its order. While the High Court required the respondents to reconsider their decision, the SCA directly mandated that the SAPS initiate an investigation into the claims of torture. The Court emphasised that the Constitution, the South African Police Service Act,²⁵⁶ and the SA ICC Act, collectively imposed a duty on the SAPS to investigate crimes against humanity, particularly under Section 4 of the SA ICC Act. Finally, an application for reconsideration brought the matter before the Constitutional Court. The key constitutional issue was whether SAPS was obligated to investigate crimes against humanity, even when perpetrated outside South Africa by foreign nationals. Leave to appeal was granted, allowing the CC to address this critical question.

The Constitutional Court's findings can be interpreted as affirming South Africa's role and responsibilities within the framework of international justice. First, it established that South Africa bears the obligation to 'exercise criminal jurisdiction over international crimes' like torture by virtue of the Rome Statute to which it is a Party.²⁵⁷ Second, the Court clarified that initiating an investigation does not hinge on the suspects' 'presence of any kind, even anticipated presence'²⁵⁸ in South Africa. Third, it underscored that South Africa's binding obligation to investigate such crimes as informed by the 'Constitution read with the ICC Act, which must be interpreted in relation to international law',²⁵⁹ has to be carried out through its domestic law enforcement mechanisms, specifically the SAPS.²⁶⁰ Against that background, the

²⁵⁴ *ibid* [16]-[19].

²⁵⁵ Grassroots Justice Network, 'Zimbabwe Exiles Forum' (2016) <<https://grassrootsjusticenetwork.org/connect/organisation/zimbabwe-exiles-forum/>> accessed 22 October 2024: ZEF is a non-profit organisation established in 2003 by Zimbabwean political and economic refugees residing in South Africa and neighbouring countries. Its primary mission is to document the experiences of Zimbabwean refugees and educate them on the principles of the rule of law, governance, democracy, and human rights.

²⁵⁶ [No. 68 of 1995]; see also Priti Patel, 'Answering Affidavit in Opposition to Leave to Appeal Application: Case No. CCT 02/14' Constitutional Court of South Africa at para. 22 from 22.1-22.7.

²⁵⁷ *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre and Another* (CCT 02/14) [2014] (ZACC 30) [31].

²⁵⁸ *ibid* [73].

²⁵⁹ *ibid* [55].

²⁶⁰ *ibid* [50]-[54].

CC found the SAPS's refusal to investigate the allegations of torture legally flawed,²⁶¹ noting that its duty was to initiate an investigation to establish the validity of the allegations rather than wait for a 'trial-ready' case.²⁶²

Du Plessis and Gevers express that the judgement of the Constitutional Court expands the concept of 'positive complementarity': which refers to states exercising jurisdiction in situations where the ICC is unable or unwilling to prosecute.²⁶³ It is important to note that the ICC does not employ universal jurisdiction;²⁶⁴ rather, it operates under treaty-based jurisdiction. In contrast, states have the capacity to invoke universal jurisdiction to address international crimes on an as-needed basis.²⁶⁵ Since Zimbabwe has not ratified the Rome Statute,²⁶⁶ it is not legally obligated to adhere to its provisions, and as a result, the ICC cannot exercise jurisdiction over crimes committed on Zimbabwean soil by Zimbabwean nationals.²⁶⁷ Consequently, the principle of complementarity does not apply, and the duty for prosecuting such crimes lies primarily with Zimbabwe's domestic legal system. However, other states—provided that they are party to the Rome Statute—can assert universal jurisdiction to fill in the accountability gap. South Africa's ICC Act allows for this process,²⁶⁸ and that is precisely what occurred in this case. The *Docket* eventually led to the South African authorities officially investigating the allegations of torture that occurred in Zimbabwe, marking a crucial step in the application of South Africa's domestic legislation to international crimes.²⁶⁹ Du Plessis maintains that this case serves as a leading illustration of how domestic and international legal frameworks can intersect through the activism of civil society. Woolaver further accentuates that without SALC's intervention, the allegations of torture in Zimbabwe might not have been investigated by South African authorities, who initially lacked both the understanding of their legal obligations and the political will to act against a regional ally.²⁷⁰ She maintains that SALC's involvement also resulted in the clarification of South Africa's obligations under universal jurisdiction, especially in terms of when investigations can be initiated and the

²⁶¹ *ibid* [81].

²⁶² *ibid* [71].

²⁶³ Du Plessis and Gevers (n 246) 159.

²⁶⁴ Du Plessis, Louw and Maunganidze (n 109).

²⁶⁵ Du Plessis and Gevers (n 246).

²⁶⁶ International Criminal Court, 'Assembly of States Parties to the Rome Statute of the International Criminal Court' (2 November 2017) <https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP16/ASP16-List-StateParties_ObserverStates_InvitedStates-ENG.pdf> accessed 24 October 2024.

²⁶⁷ Du Plessis, Louw, and Maunganidze (n 109) 6.

²⁶⁸ Implementation of the Rome Statute of the International Criminal Court Act (n 232) Sections 4(1) and 4(3)(c).

²⁶⁹ Max du Plessis, 'The Future of International Criminal Justice: Civil Society, Complementarity and the Case of South Africa' (2010) 19 *African Security Review* 17.

²⁷⁰ Woolaver (n 243) 140.

conditions under which they must proceed.²⁷¹ Accordingly, the *Torture Docket* stands as a particularly ground-breaking example, demonstrating how states can proactively address impunity in situations where the ICC does not have jurisdiction as well as complement its efforts in instances that it does.²⁷²

4.4.2 The case of Omar al-Bashir

While South Africa's role in addressing impunity through the Zimbabwe *Torture Docket* exemplifies how states can proactively pursue justice in the insufficiency of ICC jurisdiction, the involvement of South African civil society in the case of Omar al-Bashir underscores the critical role that non-state actors play in utilising the law to hold the state accountable to its international legal obligations.

Former Sudanese president Omar al-Bashir made history as the first incumbent head of state to be issued an arrest warrant by the ICC for war crimes.²⁷³ al-Bashir rose to power on 30 June 1989, through a military coup that established his presidency, which would span three decades.²⁷⁴ In March 2005, the United Nations Security Council referred the situation of lawlessness and instability in Darfur, Sudan, to the ICC, addressing crimes committed since 1 July 2002.²⁷⁵ In response, the Court sought al-Bashir's arrest both in 2009 and 2010, formally indicting him for grave international crimes—including crimes against humanity, war crimes, and genocide—based on his alleged role as an ancillary actor or co-perpetrator under Article 25(3)(a) of the Rome Statute.²⁷⁶ To date, the enforcement of the arrest warrants against al-Bashir remains outstanding as he has not been apprehended or brought before the ICC to stand trial.²⁷⁷

Despite the gravity of the charges against him and the international outcry, al-Bashir's case highlights the complexities of enforcing ICC mandates, particularly in cases involving sitting or former heads of state. In South Africa, this case brought the country's commitment to international justice into sharp focus, exposing the tension between its obligations under the Rome Statute and its political allegiances on the African continent. As a State Party to the Rome Statute, South Africa is legally bound to assist the ICC in executing the arrest warrants

²⁷¹ *ibid* 142.

²⁷² Du Plessis and Christopher Gevers (n 243).

²⁷³ Paul Moorcraft, *Omar Al-Bashir and Africa's Longest War* (Pen and Sword 2015).

²⁷⁴ *ibid*.

²⁷⁵ International Criminal Court, 'Darfur, Sudan' (2019) <<https://www.icc-cpi.int/darfur>> accessed 12 September 2024.

²⁷⁶ *The Prosecutor v Omar Hassan Ahmad Al Bashir* ICC-02/05-01/09-3.

²⁷⁷ *ibid*.

issued against al-Bashir, including facilitating his arrest should he be present within South African territory.²⁷⁸

This legal obligation was first put to the test in 2009, when the South African government invited al-Bashir to attend the inauguration of former South African president Jacob Zuma.²⁷⁹ Given that the ICC had formally issued legal orders for his apprehension, under Section 8(2) of the SA ICC Act, South Africa's Director-General of the Department of Justice was obligated to immediately facilitate al-Bashir's arrest upon his arrival in South Africa. Specifically, the Director-General was required to forward the ICC's request and supporting documents to a magistrate, who would then be to endorse the arrest warrant for execution anywhere in the country.²⁸⁰ Equipped with this information, on 7 May 2009, three CSOs, SALC, the Institute for Democracy in South Africa, and the Open Society Institute swiftly issued a press statement that raised concern about the invitation extended to al-Bashir and reiterated the government's international and domestic obligations.²⁸¹ The strong criticism from the CSOs ultimately prompted the South African government to respond with assurances that its officials would detain al-Bashir if he entered the country.²⁸² Although al-Bashir ultimately did not attend the inauguration, the CSOs involved took a pre-emptive approach by engaging barristers to draft legal documents in preparation for filling a court application contingent on two possible developments: if Omar al-Bashir arrived in South Africa and if the South African government failed to fulfil its legal obligation to arrest him.²⁸³ This proactive strategy demonstrated CSO commitment to ensuring accountability and their readiness to challenge government inaction, reinforcing the role of civil society as a crucial check on executive power.

A subsequent event related to al-Bashir further highlighted the difficulties civil society encounters in ensuring that South African authorities actually fulfil their obligations. In 2015, South Africa hosted the 25th Ordinary Session of the Assembly of the Africa Union.²⁸⁴ Irrespective of his status as an individual subject to two ICC arrest warrants, al-Bashir attended the Summit as Sudan's representative in Johannesburg from 14-15 June 2015.²⁸⁵ Upon his

²⁷⁸ Implementation of the Rome Statute of the International Criminal Court Act (n 233) Section 10.

²⁷⁹ Du Plessis (n 269) 22.

²⁸⁰ *ibid.*

²⁸¹ *ibid.*

²⁸² *Southern Africa Litigation Centre v Minister of Justice and Constitutional Development and Others* Case No 27740/2015 [2015] ZAGPPHC 402 [12].

²⁸³ Du Plessis, Louw and Maunganidze (n 109) 10.

²⁸⁴ *Southern Africa Litigation Centre v Minister of Justice and Constitutional Development and Others* (n 282) [13].

²⁸⁵ *Minister of Justice and Constitutional Development and Others v Southern African Litigation Centre and Others* (867/15) [2016] ZASCA 17 [2].

arrival, SALC submitted an expedited request to the HC, seeking an order that acknowledged the government's unconstitutional neglect to apprehend al-Bashir and compelled the government to oblige to the two warrants.²⁸⁶ The High Court granted the order, directing South African authorities to prevent al-Bashir's departure from the country.²⁸⁷ Unfortunately, South Africa's government did not adhere to the High Court's order.²⁸⁸ The failure to arrest him was attributed to South Africa's Host Agreement with the AU, which was believed to grant heads of state immunity and eclipsed any duty to apprehend and extradite al-Bashir to the ICC.²⁸⁹ The Court found that according to a proper interpretation of the Host Agreement, only representatives of the AU were granted immunity,²⁹⁰ the provision did not extend to heads of states.²⁹¹ Subsequently, it was held that the failure to arrest al-Bashir was at odds with South Africa's international and constitutional obligations.²⁹² Thereafter, the South African government appealed this decision but the SCA reaffirmed the HC's findings, agreeing that the immunity afforded to al-Bashir in his capacity as a head of state under customary international law was superseded by South Africa's obligations under the Rome Statute by virtue of the SA ICC Act.²⁹³ The SCA maintained that the government's non-observance of the arrest warrants constituted reprehensible conduct.²⁹⁴

Although Civil Society was unable to coerce South African authorities into acquiescence with the state's international obligations in this particular case, the effort still had considerable influence. SALC's legal action led to judicial decisions that strongly affirmed South Africa's domestic and international law commitments to observe the ICC's requests for cooperation and assistance.²⁹⁵ As such, the decisions of the Courts reaffirmed that South Africa's international obligations cannot be suspended for reasons of political convenience.²⁹⁶ Indeed, without CSO intervention in the aforementioned situations, South Africa may have continued in a cycle of

²⁸⁶ *ibid* [4].

²⁸⁷ *ibid* [6].

²⁸⁸ *ibid* [8]-[9].

²⁸⁹ *ibid* [20]-[21].

²⁹⁰ *ibid* [28.5].

²⁹¹ *Southern Africa Litigation Centre v Minister of Justice and Constitutional Development and Others* (n 282) 402 [28.7].

²⁹² *ibid* [2].

²⁹³ *Minister of Justice and Constitutional Development and Others v Southern African Litigation Centre and Others* (n 285) [86]-[105].

²⁹⁴ *ibid* [7].

²⁹⁵ Du Plessis and Gevers (n 246) 162.

²⁹⁶ Woolaver (n 243) 150.

inactivity with regards to allegations of international crimes, one that would have resulted in repeated noncompliance to its obligations under the Rome Statute.²⁹⁷

4.5 Conclusion

South Africa's legal and institutional framework presents a complex but largely enabling environment for CSO efforts undertaken to bridge the accountability gap. The country's post-apartheid constitutional transformation, complemented by progressive legislation grounded in the principles of human rights and the rule of law, has facilitated an active and independent civil society. However, despite these strengths, challenges persist. Political interference manifesting in the form of selective and often inconsistent implementation of domestic and international legal obligations has limited the effectiveness of CSOs in fully realising their objectives. High-profile cases such as the *Torture Docket* and the legal battle surrounding al-Bashir illustrate both the potential and the limitations of civil-society led accountability efforts. While these cases demonstrate the power of civil society to shape legal discourse and influence state compliance, they also expose gaps in enforcement mechanisms by accentuating the state's occasional reluctance to prioritise justice over political considerations.

²⁹⁷ *ibid* 157.

Chapter Five

Chapters three and four of this minor dissertation underscore the pivotal role of legal frameworks in shaping civil society's ability to address impunity for international crimes. Both countries share commitments to international legal instruments, nonetheless, their divergent approaches to domestication and implementation illuminate critical contrasts. Yet, despite the differences, CSOs in both countries face similar challenges that impede their effectiveness. A key finding is that constitutional or legal guarantees alone are insufficient without practical implementation and a supportive political environment. In both countries, there is a significant gap between legal commitments on paper and the realities on the ground, which affects the ability of CSOs to advocate for human rights and combat impunity for international crimes. This chapter synthesises findings from Tanzania and South Africa, identifying legal gaps and best practices in civil society engagement for accountability. It offers recommendations for strengthening CSO effectiveness in both countries, focusing on reducing state interference in Tanzania and advocating for legal reform and strengthening civil society partnerships in South Africa.

5.1 Legal gaps in Tanzanian civil society discourse

At the core of Tanzania's legal framework lies a paradox. Chapter three of this dissertation delved into these dynamics, exploring how Tanzania's domestic legal landscape interacts with its international and regional obligations, ultimately shaping the realities faced by CSOs on the ground. The Constitution of the United Republic of Tanzania enshrines fundamental rights, such as freedoms of expression, association, and assembly—key pillars of a vibrant civil society. Additionally, the 2001 National Policy on Non-Governmental Organisations recognises CSOs as essential partners in development and governance. These provisions, however, are undermined by a series of restrictive laws and policies. Chief among these is the Non-Governmental Organisations Act of 2002, which mandates compulsory registration and grants the government extensive discretion to approve or deny applications based on vaguely defined criteria such as 'public interest.'²⁹⁸ Paired with burdensome reporting requirements and the government's power to suspend or deregister organisations, these measures create a climate of state overreach that stifles the autonomy of CSOs. Instead of fostering collaboration, the state has compounded these challenges through judicial harassment, restrictive legislation, and

²⁹⁸ The Non-Governmental Organisations Act (n 131) Section 14.

bureaucratic barriers that disproportionately target organisations critical of government policies.²⁹⁹

The Written Laws Bill (Miscellaneous Amendments) Act of 2019 amplifies these constraints by effectively dismantling public interest litigation.³⁰⁰ By requiring claimants to demonstrate direct personal harm, this law significantly restricts the ability of CSOs to address systemic issues affecting broader communities. This provision contradicts best practices under customary international law and diminishes the vital role of civil society in holding power to account. These legislative measures deepen the cavity between Tanzania's international human rights commitments and its national practices, raising serious questions about the state's readiness to honour the principles articulated in the instruments it has ratified. The resulting environment of legal ambiguity undermines accountability and weakens the enforcement of rights, leaving victims of injustice with limited recourse.

While regional mechanisms could provide alternative paths to justice, Tanzania's inconsistent engagement with these systems undermines their potential. The country's withdrawal from the individual complaint mechanism under the African Court marks a significant regression. This decision denies individuals and CSOs access to an essential platform for redress when domestic remedies fail. It reflects a deliberate strategy of consolidating power, suppressing dissent, and shielding the state from external scrutiny.³⁰¹ By closing off this avenue for justice, Tanzania further marginalises civil society's ability to address systemic violations and advocate for human rights.

Tanzania's approach to international criminal law presents a similar cause for concern. For Tanzania, signing and ratifying the Rome Statute signifies a binding commitment under international law to adhere to its provisions, including cooperating with the ICC in prosecuting individuals accused of international crimes.³⁰² This commitment entails obligations such as domesticating the Statute's provisions into national law, enabling local courts to initiate proceedings against perpetrators of international crimes, and cooperating with the ICC under

²⁹⁹ CIVICUS: World Alliance for Citizen Participation and DefendDefenders (East and Horn of Africa Human Rights Defenders Project) (n 133) 2.

³⁰⁰ Specifically, Part III of this Act amends Section 4 of the Basic Rights and Duties Enforcement Act (CAP. 3) 2019. It introduced a stipulation that constitutional rights violation claims must provide an affidavit detailing how the alleged violation directly and personally impacted the claimants.

³⁰¹ Amnesty International, 'Tanzania: Withdrawal of Individual Rights to African Court Will Deepen Repression' (Amnesty International, 2 December 2019) <<https://www.amnesty.org/en/latest/press-release/2019/12/tanzania-withdrawal-of-individual-rights-to-african-court-will-deepen-repression/#:~:text=The%20Tanzanian%20government%20has%20withdrawn>> accessed 16 July 2024.

³⁰² Vienna Convention on the Law of Treaties (n 82) art 11.

the principle of complementarity. However, the country's dualist legal system necessitates explicit legislative domestication of international treaties for them to have binding authority within its jurisdiction. The failure to domesticate the Rome Statute highlights a broader reluctance to fully implement international criminal justice mechanisms. Without domestication, the Statute's principles remain aspirational, limiting Tanzania's ability to cooperate with the ICC or prosecute international crimes domestically. This gap weakens the global fight against impunity and restricts the legal tools available to CSOs advocating for justice and accountability.

Overall, Tanzania's legal and institutional environment is fraught with contradictions that hinder the effectiveness of civil society in addressing impunity and advocating for human rights. While its constitutional and policy frameworks offer a promising foundation, the restrictive laws and inconsistent engagement with international and regional mechanisms reveal a troubling pattern of state control and disengagement from accountability. Bridging these gaps requires not only legislative reforms to create a more enabling environment but also a renewed commitment to international obligations. Strengthening the role of CSOs and fostering collaboration with international justice mechanisms are crucial steps toward ensuring that justice is accessible and impunity is meaningfully addressed in Tanzania.

5.2 Legal gaps in South African civil society discourse

The most identifiable gap in South African civil society discourse is the discrepancy between South Africa's progressive legal framework supporting civil society and the practical barriers that hinder the actualisation of this support. Despite constitutional and statutory protections guaranteeing civic freedoms, CSOs in South Africa face increasing challenges. Administrative hurdles disproportionately affect smaller and rural organisations³⁰³ and the misapplication of laws to suppress protests illustrates how procedural regulations can be wielded against civic engagement.³⁰⁴

These practices reflect an alarming trend: whereas the legal framework supports civil society, the political environment often works against it, especially when CSOs engage in advocacy that challenges state power.³⁰⁵ The tension between civil society and the government exposes a critical vulnerability in South Africa's governance structure, where the state's progressive

³⁰³ Human Rights Institute of South Africa (HURISA) (n 226) 12.

³⁰⁴ Busisiwe Zasekhaya and others, 'The State of Protest Report: Right2Protest Project Report on the State of Protest in South Africa' (2020) 11.

³⁰⁵ CIVICUS: World Alliance for Citizen Participation, Human Rights Institute of South Africa (HURISA) and Centre for the Study of Violence and Reconciliation (CSVR) (n 228).

legal commitments are belied by its resistance to external oversight. This gap reflects a disjunction that threatens to hollow out civil society's ability to function as an effective check on government power.

South Africa's engagement with international mechanisms reflects a similar dichotomy. The country's approach to addressing impunity for international crimes offers both promise and challenges, creating a complex landscape. On one hand, the country has made significant strides in aligning its domestic legal framework with international obligations. The naturalisation of the Rome Statute through the SA ICC Act is a notable example. Empowering South Africa's NPA and its courts to prosecute and adjudicate international crimes, even those committed outside its borders,³⁰⁶ this Act demonstrates the country's engagement with international criminal justice. However, this progress is tempered by practical and political obstacles that hinder the full realisation of these commitments. Cases such as the *Torture Docket* highlight how civil society has had to step in to fill gaps left by state inaction, using legal channels to compel accountability. These efforts, while commendable, may produce a dependency on non-state actors to navigate systemic shortcomings and ensure that justice is pursued, while ideally, the state should be the primary actor in upholding justice and maintaining accountability. In turn, this raises concerns about the sustainability and long-term effectiveness of justice mechanisms if they heavily rely on external actors rather than robust state institutions. Furthermore, high-profile incidents such as the inability to detain Omar al-Bashir reveal political reluctance to fully honour international obligations. This not only undermines the legitimacy of international legal frameworks, it also weakens domestic and regional commitments to accountability, setting a concerning precedent for selective enforcement of justice. Such actions not only damage South Africa's credibility on the global stage but also undermine the efforts of CSOs advocating for justice and accountability within the international legal framework.

5.3 Best practices for civil society interventions in accountability: lessons from Tanzania and South Africa

CSOs in Tanzania and South Africa have demonstrated the critical role of strategic litigation in advancing accountability, defending human rights, and strengthening democratic governance, even in challenging environments. Their efforts showcase how legal action can be

³⁰⁶ Implementation of the Rome Statute of the International Criminal Court Act (n 236) Section 3(d).

a powerful tool to challenge unjust practices and hold governments accountable, offering valuable lessons for similar contexts.

In Tanzania, strategic litigation has been effectively used to contest restrictive laws and advocate for marginalised communities.³⁰⁷ A notable example is the challenge of the Media Services Act 2016 before the EACJ. The Court's 2019 ruling against the Act highlighted the power of legal advocacy to not only reform oppressive legislation but also reinforce judicial oversight of governance, setting a precedent for challenging restrictive laws and buttressing the rule of law in the region.³⁰⁸ While strategic litigation in Tanzania faces obstacles such as procedural delays and limited enforcement of rulings, it remains a critical tool for protecting rights, spurring legal reforms, and generating broader public discourse on accountability and governance.

In South Africa, CSOs have similarly relied on strategic litigation to address international crimes and uphold the country's obligations under international law. Organisations like SALC have played a leading role in these efforts. For instance, in the *Torture Docket*, SALC presented evidence of torture committed by Zimbabwean officials, compelling South African authorities to investigate under international legal standards. Another prominent example is the case involving Omar al-Bashir, where SALC sought to hold the government accountable for failing to arrest him despite two ICC warrants against him for genocide and war crimes. Although the South African government ultimately contravened its legal obligations, the litigation underscored the judiciary's critical role in upholding both domestic and international justice and ensuring accountability even when political will is lacking.

The experiences of CSOs in both countries demonstrate the transformative potential of strategic litigation. By leveraging judicial mechanisms, these organisations not only challenge impunity but also contribute to fostering a culture of accountability and strengthening human rights protections. Such efforts show that litigation is not just a legal strategy but a fundamental part of the broader pursuit of justice and democratic governance.

These examples highlight how civil society can use both regional and domestic legal frameworks to bridge gaps in accountability. In Tanzania, the focus has been on regional mechanisms like the EACJ to counteract restrictive domestic laws, while South African CSOs have relied on the country's strong legal framework to address both national and international

³⁰⁷ Fundikila Wazambi, 'Tanzania Human Rights Report 2023' xvii.

³⁰⁸ *Media Council of Tanzania and Others v Attorney-General of the United Republic of Tanzania* (n 166).

crimes. Despite their different approaches, the efforts in both countries affirm the judiciary's role as a key player in defending human rights.

5.4 Recommendations

5.4.1 Tanzania: elimination of overarching state interference

With the understanding that CSOs rely on government to provide an 'enabling environment',³⁰⁹ conducive to their work, the primary recommendation for Tanzania is to prioritise comprehensive legal reforms aimed at establishing a legal framework that facilitates active and meaningful civil society engagement. Notably, this recommendation aligns with the same feedback Tanzania received during its second UPR cycle, emphasising the urgency and continued relevance of such reforms in fostering an environment conducive to civil society's active participation in promoting human rights and good governance.³¹⁰

Primarily, the Tanzanian government should prioritise legal reforms to guarantee the observance of international guidelines that ensure the right to freely assemble and associate with others. Laws that stifle these freedoms, such as the NGO Act and the Written Laws (Miscellaneous Amendments) Act should be revised to remove overly burdensome and arbitrary requirements on CSOs.³¹¹ These regulations impose excessive restrictions on registration and operations, making it difficult for CSOs to function independently and effectively when addressing issues of systemic injustice and impunity.³¹² A revision would ensure that the legal framework governing CSOs respects the rights and freedoms guaranteed under international law and allows civil society to operate free from unwarranted state interference.³¹³ Reforms should be guided by international best practices, and should align with global standards for the protection and empowerment of civil society.

However, a precarious shortcoming lies in the government's lack of precedent in implementing similar measures. Given this history of inaction, there is little basis to assume that the state will now adopt these recommendations. This underscores a broader issue: the extent to which such reforms are pursued is largely dictated by the government's political will. As a result, rather

³⁰⁹ Michael Bratton, 'The Politics of Government-NGO Relations in Africa' (1989) 17 World Development 569, 583.

³¹⁰ CIVICUS: World Alliance for Citizen Participation and DefendDefenders (East and Horn of Africa Human Rights Defenders Project) (n 133) 3.

³¹¹ *ibid.*

³¹² United Nations Reporting Initiative on Climate Change, Health, Water and the Environmental, 'Joint Non-Governmental Organisations (NGOs) Report to the Third Universal Periodic Review (UPR) of the United Republic of Tanzania' (2021) 5.

³¹³ CIVICUS: World Alliance for Citizen Participation and DefendDefenders (East and Horn of Africa Human Rights Defenders Project) (n 133) 13.

than being grounded in legal obligation or institutional commitment, the implementation of these recommendations remains subject to shifting political priorities, which may hinder meaningful progress.

5.4.2 South Africa: legal reform and strengthening collaboration between CSOs and government

The South African government should prioritise revising restrictive laws to align with Article 21 of the ICCPR and Article 17 of the South African Constitution, both of which guarantee freedom of association.³¹⁴ Comprehensive legal reforms are needed to eliminate punitive compliance measures and create a more enabling environment for CSOs to operate freely, effectively, and without fear of retribution. This recommendation aligns with the feedback South Africa received during its third UPR cycle regarding civic space.³¹⁵ Revising these laws would uphold the rights of CSOs to express their views without undue interference, fostering a more open and democratic environment.

Accordingly, institutionalising transparent and consultative processes that involve CSOs in the reform of these laws is essential. The government must foster a constructive partnership between CSOs and state institutions. This can be done through the establishment of formal channels for dialogue and collaboration, better aligning the state's objectives with civil society's advocacy for social justice, policy reform, and international accountability. Said partnership would prevent the state from using regulatory oversight as a tool to silence critics or limit the operational capacity of organisations advocating for human rights and government accountability.

Ultimately, the recommendations for Tanzania and South Africa reflect a shared recognition of the critical need for legal reforms to strengthen the operational environment for CSOs in both countries. Despite their differing legal and political contexts, both nations face persisting challenges stemming from overreaching state interference and restrictive legislation that undermine the essential roles of CSOs in promoting human rights, transparency, and accountability. This commonality underscores the exigency for comprehensive legal reforms aimed at safeguarding the rights to freedom of association and expression, as stipulated in

³¹⁴ CIVICUS: World Alliance for Citizen Participation, Human Rights Institute of South Africa (HURISA) and Centre for the Study of Violence and Reconciliation (CSVR) (n 228) 2.

³¹⁵ *ibid* 13.

international human rights instruments. By prioritising these reforms, both Tanzania and South Africa can create enabling environments that empower civil society to function effectively.

A supportive and enabling environment provides CSOs with the platform and resources necessary to successfully execute their functions, including grassroots advocacy. This means that the legal, institutional, and administrative frameworks actively facilitate civil society's operations. In practical terms, a conducive environment enables CSOs to engage with local communities, educate the public on their rights, and advocate for justice without fear of retaliation or administrative hurdles. It ensures that they can operate freely, access funding, and form strategic partnerships, both locally and internationally. Moreover, such an environment allows CSOs to amplify marginalised voices and provide critical oversight of government actions or inactions concerning accountability for human rights violations. Grassroots accountability, in this context, becomes a powerful tool for bolstering community participation in the justice process. It allows CSOs to build trust within affected communities, document violations, and facilitate victim-centred approaches to justice. A conducive environment not only legitimises the role of CSOs in this space but also strengthens their ability to bridge the gap between local justice needs and broader accountability mechanisms. However, this opportunity is contingent on the actual implementation of policies that create such an environment. Without practical measures to eliminate bureaucratic inefficiencies, ensure the rule of law, and protect civil liberties, the aptitude of CSOs in engaging in the fight against impunity remains constrained. Therefore, while a conducive environment offers significant opportunities for grassroots advocacy, it also requires continuous efforts to safeguard the freedoms and operational capacities of CSOs.

5.5 Concluding reflections

The struggle against impunity for international crimes remains a complex and multifaceted endeavour, requiring the active participation from both state and non-state actors. CSOs, as this study demonstrates, are critical actors in holding states responsible, advocating for victims, and bridging the gaps in justice systems. However, their effectiveness is deeply influenced by the legal and political contexts in which they operate. Tanzania and South Africa represent two ends of a spectrum, with the latter offering lessons on the enabling potential of progressive legal frameworks and the former underscoring the resilience of civil society in restrictive environments. By understanding these dynamics, policymakers, practitioners, and scholars can work toward fostering environments where civil society can thrive, ultimately contributing to the global fight against impunity and the advancement of justice and human rights.

Bibliography

Primary Sources

Constitutions

Tanzanian:

Constitution of the United Republic of Tanzania, 1997.

South African:

Constitution of the Republic of South Africa, 1996.

Statutes

Tanzanian:

Basic Rights and Duties Enforcement Act (CAP. 3) of 2019.

Media Services Act of 2016.

The Non-Governmental Organisations Act (Amendments) Regulations of 2018.

The Non-Governmental Organisations Act of 2002.

The Treaty for the Establishment of the East African Community Act of 1999.

Written Laws Bill (Miscellaneous Amendments) (No. 3) Act of 2019.

Written Laws Bill (Miscellaneous Amendments) (No. 3) Act of 2020.

South African:

Implementation of the Rome Statute of the International Criminal Court Act of 2002.

National Development Act of 1998.

Non-Profit Organisations Act of 1997.

Regulation of Gatherings Act of 1993.

Policies

Tanzanian:

The National Policy on Non-Governmental Organisations (NGOs) 2001.

South African:

The National Development Plan 2030.

Cases

Tanzanian:

Media Council of Tanzania and Others v Attorney-General of the United Republic of Tanzania
Reference No 2 of 2017 [2019] EACJ 2.

South African:

Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02)
[2002] ZACC 15.

*Minister of Justice and Constitutional Development and Others v Southern African Litigation
Centre and Others* (867/15) [2016] ZASCA 17.

*National Commissioner of the South African Police Service v Southern African Human Rights
Litigation Centre and Another* (CCT 02/14) [2014] ZACC 30.

*Southern Africa Litigation Centre v Minister of Justice and Constitutional Development and
Others* Case No 27740/2015 [2015] ZAGPPHC 402.

Foreign:

Advisory Opinion Concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide [1951] (International Court of Justice).

Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962) ICJ GL No 50 [1970] ICJ Rep 3 (Judgment of 5 February).

Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) [2007] ICJ (Judgement of 26 February).

Case Concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v Rwanda) [2006] (ICJ).

Case of Barrios Altos v Peru [2001] (Merits) IACtHR Series C No 75.

Case of the Massacres of El Mozote and Nearby Places v El Salvador [2012] (Merits, Reparations, and Costs) IACtHR Series C No 252 Section 4(a).

Case of Velásquez-Rodríguez v Honduras [1988] (Merits) IACtHR Series C No 6.

Prosecutor v Anto Furundzija IT-95-17/1-T [1998] (ICTY).

Prosecutor v Dusko Tadic aka 'Dule' (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) [1995] (ICTY).

Prosecutor v Zejnir Delalic, Zdravko Mucic (aka 'PAVO'), Hazim Delic and Esad Landžo (aka 'ZENGA') ('ELEBICI Case') IT-96-21-A (ICTY).

Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion) [1951].

The Prosecutor v Jean Kambanda (Judgement and Sentence) Case No: ICTR 97-23-S (4 September 1988).

The Prosecutor v Omar Hassan Ahmad Al Bashir ICC-02/05-01/09-3.

Affidavit

South African:

Patel P, 'Answering Affidavit in Opposition to Leave to Appeal Application: Case No. CCT 02/14' Constitutional Court of South Africa.

International Treaties

United Nations Treaty Series:

Charter of the United Nations (adopted June 26 1945, entered into force 24 October 1945) XV UNCIO 335, amendments in 557 UNTS 143, 638 UNTS 308 and 892 UNTS 119.

Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277.

Convention on the Rights of a Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 2 May 2008) 2515 UNTS 3 (CRPD).

Declaration on Human Rights Defenders (adopted on 9 December 1988) UNGA Res 53/144.

International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (CERD).

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 (CMW).

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

Statute of the International Court of Justice (1945) 33 UNTS 993.

Statute of the International Criminal Tribunal for Rwanda, (8 November 1994) (UN Doc S/RES/955 (1994), Annex, (1994) 33 ILM 1598), OXIO 139.

UNGA Res 3314 (XXIX) (adopted 14 December 1974).

UNGA Res 60/147 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (adopted 16 December 2005).

UNGA Res 96(I) (1947) GAOR, Resumed 1st Sess. 188.

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1115 UNTS 331.

International Humanitarian Law Databases:

Charter of the International Military Tribunal (adopted 8 August 1945, entered into force 8 August 1945) 350 IHL 49.

Regional Treaties

African Union Instruments:

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

African Union Convention on Preventing and Combating Corruption (adopted 11 July 2003, entered into force 5 August 2006) (AUCPCC).

Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001).

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 10 June 1998, entry into force 25 January 2004).

United Nations Documents

Human Rights Committee 'General Comment No. 34' (2001) CCPR/C/GC/34.

Human Rights Council, 'National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: United Republic of Tanzania' (2011) A/HRC/WG.6/12/TZA/1.

Human Rights Council, 'Report of the Working Group on the Universal Periodic Review - United Republic of Tanzania' (2016) A/HRC/33/12.

Human Rights Council, 'Resolution 12/16. Freedom of Opinion and Expression' (2009) A/HRC/RES/12/16.

Human Rights Council, 'Resolution 21/16. The Rights to Freedom of Peaceful Assembly and of Association' (2012) A/HRC/RES/21/16.

Human Rights Council, 'Resolution 24/21. Civil Society Space: Creating and Maintaining, in Law and in Practice, a Safe and Enabling Environment' (2013) A/HRC/RES/24/21.

Human Rights Council, 'Resolution 27/31. Civil Society Space' (2014) A/HRC/RES/27/31.

Human Rights Council, 'Summary of Stakeholders' Submissions on United Republic of Tanzania' (2021) A/HRC/WG.6/39/TZA/3.

Office of the High Commissioner for Human Rights, 'Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society' (2014).

Office of the High Commissioner for Human Rights, 'International Convention on Migrant Workers and Its Committee: Fact Sheet No. 24 (Rev.1)' (2005).

The United Nations Division of Human Rights, 'Seminar on the Establishment of Regional Commissions on Human Rights with Special Reference to Africa' (1969) ST/TAO/HR/38.

United Nations Economic and Social Council, Sub-Committee on Prevention of Discrimination and Protection of Minorities, 'Questions of the Impunity of Perpetrators of Human Rights Violations (Civil and Political Rights) (1996) U.N. Doc. E/CN.4/Sub.2/1996/18 (Prepared by Louis Joinet)'.

United Nations Economic and Social Council, Sub-Committee on Prevention of Discrimination and Protection of Minorities, 'Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations (Economic, Social and Cultural Rights), Prepared by Mr. El Hadji Guissé, Special Rapporteur, pursuant to Sub-Commission Resolution 1996/24' (1997).

United Nations Economic and Social Council, Sub-Committee on Prevention of Discrimination and Protection of Minorities, 'Questions of the Impunity of Perpetrators of Human Rights Violations (Civil and Political Rights) Revised Final Report Prepared by Mr. Joinet pursuant to Sub-Commission Decision 1996/119' (1997).

United Nations General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (2005).

United Nations Reporting Initiative on Climate Change, Health, Water and the Environmental, 'Joint Non-Governmental Organisations (NGOs) Report to the Third Universal Periodic Review (UPR) of the United Republic of Tanzania' (2021).

United States Agency for International Development, Bureau for Democracy Conflict and Humanitarian Assistance and Center of Excellence on Democracy, Human Rights and Governance, '2021 Civil Society Organisations Sustainability Index' (2021).

Vienna Declaration and Programme of Action (adopted on 25 June 1993 by the World Conference on Human Rights).

Regional Bodies' Documents

African Commission on Human and People's Rights, 'Concluding Observations and Recommendations - Tanzania: 2nd to 10th Periodic Report, 1992-2006' (2008).

Council of the European Union, 'The AU-EU Expert Report on the Principle of Universal Jurisdiction 8672/1/09 REV 1' (2009).

Secondary Sources

Books

Baskaran S and Ramasamy R, 'Globalizing Human Rights: The Role of NGOs in Protecting and Promoting Human Rights in Sri Lanka' in Ådne Valen-Sendstad and Jeewaka Saman Kumara (eds), *Human Rights and Reconciliation in the Post-Conflict Multicultural Society in Sri Lanka* (S Godage & Brothers (Pvt) Ltd 2022).

Bassiouni MC, 'Accountability for Violations of International Humanitarian Law and Other Serious Violations of Human Rights', *Post-Conflict Justice* (Traditional Publishers 2002).

Bassiouni MC, *International Criminal Law, Volume 1: Sources, Subjects and Contents: Third Edition* (BRILL 2008).

Beigbeder Y, *International Justice against Impunity: Progress and New Challenges* (BRILL 2005).

Cannock M, 'Strengthening International Criminal Court Cooperation – the Role of Civil Society', *Cooperation and the International Criminal Court: Perspectives from Theory and Practice* (BRILL 2016).

Carothers T and Brenchenmacher S, *Closing Space: Democracy and Human Rights Support under Fire* (Carnegie Endowment for International Peace 2014).

Cassese A, *Cassese's International Criminal Law* (OUP Oxford 2013).

Chambers S and Kopstein J, 'Civil Society and the State' in John S Dryzek, Bonnie Honig and Anne Phillips (eds), *The Oxford Handbook of Political Theory* (Oxford University Press 2008).

Clark AM, *Diplomacy of Conscience* (Princeton University Press 2001).

Cryer R, Robinson D and Vasiliev S, *An Introduction to International Criminal Law and Procedure* (Cambridge University Press 2019).

Cullen A, 'War Crimes', *Routledge Handbook of International Criminal Law* (Routledge 2010).

Du Plessis M and Gevers C, 'Civil Society, "Positive Complementarity" and the "Torture Docket" Case' in Sarah Williams and Hannah Woolaver (eds), *Civil Society and International Criminal Justice in Africa: Challenges and Opportunities* (Faculty of Law, University of Cape Town 2016).

Elihu Lauterpacht, *Aspects of the Administration of International Justice* (Cambridge University Press 1991).

Firmin A, 'Contested and under Pressure: A Snapshot of the Enabling Environment of Civil Society in 22 Countries' (Ine Van Severen ed 2017).

Green M, *The Development State: Aid, Culture & Civil Society in Tanzania* (Boydell & Brewer Ltd 2014).

Haapanen T (ed), 'Civil Society in Tanzania' (2007).

Holmes JT, 'The Principle of Complementarity' in Roy S Lee (ed), *The International Criminal Court: The Making of the Rome Statute* (Kluwer Law International 1999).

Huckerby J and Rodley N, 'Outlawing Torture: The Story of Amnesty International's Efforts to Shape the UN Convention against Torture', *Human Rights Advocacy Stories* (Foundation Press 2009).

Humphrey JP, 'The Universal Declaration of Human Rights: Its History, Impact and Juridical Character' in Bertie G Ramcharan (ed), *Human Rights: Thirty Years After the Universal Declaration* (Brill | Nijhoff 2024).

Iliffe J, *A Modern History of Tanganyika* (Cambridge University Press 1979).

Jennings R and Watts A (eds), *Oppenheim's International Law*, vol. 1 (9th edn., Pearson Education Limited 1996).

Jones DV, *Toward a Just World: The Critical Years in the Search for International Justice* (University of Chicago Press 2002).

Keck ME and Sikkink K, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998).

Kourula E, 'Universal Jurisdiction for Core International Crimes' in Morten Bergsmo and Ling Yan (eds), *State Sovereignty and International Criminal Law* (Torkel Opsahl Academic EPublisher 2012).

Lange S, Hege Wallevik and Kiondo A, *Civil Society in Tanzania* (Chr Michelsen Institute 2000).

Lee RS (ed), *The International Criminal Court: The Making of the Rome Statute* (Kluwer Law International 1999).

Moorcraft P, *Omar Al-Bashir and Africa's Longest War* (Pen and Sword 2015).

Mudukuti A, 'The Zimbabwe Torture Case: Reflections on Domestic Litigation for International Crimes in Africa' in Sarah Williams and Hannah Woolaver (eds), *Civil Society*

and International Criminal Justice in Africa: Challenges and Opportunities (Faculty of Law, University of Cape Town 2016).

Murithi T, *Judicial Imperialism: The Politicisation of International Criminal Justice in Africa* (Jacana Media 2019).

Murray R, *The African Commission on Human and Peoples' Rights and International Law* (Hart 2000).

Murungu C and Biegon J (eds), *Prosecuting International Crimes in Africa* (Pretoria University Law Press 2011).

Mutua M, 'The African Human Rights System: A Critical Evaluation' (2000).

Nouwens SMH, *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan* (Cambridge University Press 2013).

Pace WR and Thieroff M, 'Participation on Non-Governmental Organisations' in Roy S Lee (ed), *The International Criminal Court: The Making of the Rome Statute* (Kluwer Law International 1999).

Pinto M, 'NGOs and the Inter-American Court of Human Rights' in Tullio Treves and others (eds), *Civil Society, International Courts and Compliance Bodies* (TMC Asher Press 2005).

Robinson M, *The Princeton Principles on Universal Jurisdiction* (Program In Law And Public Affairs, Princeton University 2001).

Shelton D, *Remedies in International Human Rights Law* (2nd edn., Oxford University Press 2006).

Sohn LB, *Rights in Conflict: The United Nations & South Africa* (Transnational Publishers 1994).

Treves T and others (eds), *Civil Society, International Courts, and Compliance Bodies* (TMC Asser Press, New York 2005).

Vajic N, 'Some Concluding Remarks on NGOs and the European Court of Human Rights' in Tullio Treves and others (eds), *Civil Society, International Courts and Compliance Bodies* (TMC Asher Press 2005).

Weissbrodt D, 'The Contribution of International Nongovernmental Organisations to the Protection of Human Rights', *Human Rights in International Law, Vol. II* (Oxford University Press 1986).

Woolaver H and Williams S, 'Introduction' in Sarah Williams and Hannah Woolaver (eds), *Civil Society and International Criminal Justice in Africa: Challenges and Opportunities* (Faculty of Law, University of Cape Town 2016).

Woolaver H, 'Partners in Complementarity: The Role of Civil Society in the Investigation and Prosecution of International Crimes in South Africa' in Sarah Williams and Hannah Woolaver (eds), *Civil Society and International Criminal Justice in Africa: Challenges and Opportunities* (Faculty of Law, University of Cape Town 2016).

Zagorac D, 'International Courts and Compliance Bodies: The Experience of Amnesty International' in Tullio Treves and others (eds), *Civil Society, International Courts and Compliance Bodies* (TMC Asher Press 2005).

Zehra F. Kabasakal Arat, 'Looking beyond the State but Not Ignoring It: A Framework of Analysis for Non-State Actors and Human Rights' in George Andreopoulos, Zehra F Kabasakal Arat and Peter Juviler (eds), *Non-State Actors in the Human Rights Universe* (Lynne Rienner Publishers 2006).

Journal Articles

Ainley K, 'The Responsibility to Protect and the International Criminal Court: Counteracting the Crisis' (2015) 91 *International Affairs* 37.

Andrews P, 'Incorporating International Human Rights Law in National Constitutions: The South African Experience' (2008) 1291 *Articles & Chapters* 835.

Banks N, Hulme D and Edwards M, 'NGOs, States, and Donors Revisited: Still Too Close for Comfort?' (2015) 66 *World Development* 707.

Bassiouni MC, 'Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice' (2001) 42 *Virginia Journal of International Law* 81.

Benzing M, 'The Complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity' (2003) 7 *Max Planck Yearbook of United Nations Law Online* 591.

Berge W, 'Criminal Jurisdiction and the Territorial Principle' (1931) 30 *Michigan Law Review* 238.

Bratton M, 'The Politics of Government-NGO Relations in Africa' (1989) 17 *World Development* 569.

Brown BS, 'Primacy or Complementarity: Reconciling the Jurisdiction of National Courts and International Criminal Tribunals' (1998) 23 *Yale Journal of International Law* 3.

Brown C, 'Theories of International Justice' (1997) 27 *British Journal of Political Science* 273.

Buergenthal T, 'International Human Rights Law and Institutions: Accomplishments and Prospects' (1988) 63 *Washington Law Review* 1.

Burmester H, 'Civil Society and the Instigation of International Court Litigation: The Australian Experience' (2021) 21 *Melbourne Journal of International Law* 772.

Chandler D, "International Justice" (2000) II *New Left Review* 55.

D'Alessandra F, 'UN Accountability Mandates in International Justice' (2023) 21 *Journal of International Criminal Justice* 551.

Damaska M, 'What Is the Point of International Criminal Justice' (2008) 83 *Chicago-Kent Law Review* 329.

Dawson GM, 'Defining Substantive Crimes within the Subject Matter Jurisdiction of the International Criminal Court: What Is the Crime of Aggression?' (2000) 19 *NYLS Journal of International and Comparative Law* 413.

De Vos P, 'Pious Wishes or Directly Enforceable Human Rights?: Social and Economic Rights in South Africa's 1996 Constitution' (1997) 13 *South African Journal on Human Rights* 67.

de Waal A, 'Darfur and the Failure of the Responsibility to Protect' (2007) 83 *International Affairs* 1039.

Du Plessis M, 'The Future of International Criminal Justice: Civil Society, Complementarity and the Case of South Africa' (2010) 19 *African Security Review* 17.

Dugard J, 'International Criminal Law, the International Criminal Court and Civil Society' 2016 *Juta's Law Journals*.

Dugard J, 'International Law and the "Final" Constitution' (1995) 11 *South African Journal on Human Rights* 241.

Duhu J, 'Donors Strengthening Civil Society in the South: A Case Study of Tanzania' (2005) 8 *International Journal of Not-for-Profit Law* 42.

Durham H, 'The Role of Civil Society in Creating the International Criminal Court Statute: Ten Years on and Looking Back' (2012) 3 *Journal of International Humanitarian Legal Studies* 3.

Engle KL, 'Anti-Impunity and the Turn to Criminal Law in Human Rights' (2015) 100 *Cornell Law Review* 1069.

Falk R, 'The Pursuit of International Justice: Present Dilemmas and an Imagined Future' (1999) 52 *Journal of International Affairs* 409.

Friedman L, 'Definition of War Crimes and Their Use in the International Criminal Tribunals for the Former Yugoslavia and Rwanda' (1999) 3 *Hofstra Law and Policy Symposium* 9.

Gevers C, 'Southern Africa Litigation Centre & Another v National Director of Public Prosecutions & Others: Note' (2013) 130 *The South African Law Journal* 293.

Glasius M, 'Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court' 137.
 Hathaway OA and others, 'What Is a War Crime?' (2019) 44 Yale Journal of International Law 53.
 Heyns C, 'The African Regional Human Rights System: The African Charter' (2004) 108 Penn State Law Review 679.
 Hill DJ, 'International Justice' (1896) 6 The Yale Law Journal 1.
 Hopkins K, 'Assessing the World' S Response to Apartheid: A Historical Account of International Law and Its Part in the South African Transformation Recommended Citation' (2015) 10 University of Miami International and Comparative Law Review 241.
 Hoyle C and Ullrich L, 'New Court, New Justice?' (2014) 12 Journal of International Criminal Justice 681.
 Jon Heller K, 'Radical Complementarity' (2016) 14 Journal of International Criminal Justice 637.
 Jones S, 'In the Pursuit of Justice: A Comment on the Arrest Warrant for President AI-Bashir of Sudan' (2009) 6 Eyes on the ICC 13.
 Kabudi PJ, 'The Judiciary and Human Rights in Tanzania: Domestic Application of International Human Rights Norms' (1991) 24 Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America 271.
 Kahimba NF, Ngaiza CE and Mabula BJ, 'Domestic Prosecution of International Crimes in Tanzania: The State of the Law' (2020) 47 Eastern Africa Law Review 106.
 Kamau N, 'Media Council of Tanzania and Others v. Attorney General of the United Republic of Tanzania (East Afr. Ct. J.)' (2020) 59 International Legal Materials 849.
 Kayitana E, 'The Universal Jurisdiction of South African Criminal Courts and Immunities of Foreign State Officials' (2016) 18 Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad 2561.
 Khan MA, 'Balancing the Legitimate Interests of States: Exploring the Connection between the Principles of Universal Jurisdiction and Complementarity under the Rome Statute' (2024) 10 Review of Human Rights 1.
 Matthews I, 'The National Prosecuting Authority' in Chandré Gould (ed), *Criminal (in)justice in South Africa: A Civil Society Perspective* (Institute for Security Studies 2009).
 Marks, S, 'State-Centrism, International Law, and the Anxieties of Influence' (2006) 19 Leiden Journal of International Law 339.
 McCormack TLH, 'Selective Reaction to Atrocity: War Crimes and the Development of International Criminal Law' (1997) 60 Albany Law Review 681.
 Megret F and Giles Samson M, 'Holding the Line on Complementarity in Libya: The Case for Tolerating Flawed Domestic Trials' (2013) 11 Journal of International Criminal Justice 571.
 Meyersfeld B, 'Domesticating International Standards: The Direction of International Human Rights Law in South Africa' (2013) 5 Constitutional Court Review 399.
 Mnyasenga TR, 'Appraisal of the Court of Appeal's Decision in Attorney General v. Rebeca Z. Gyumi' (2021) 1 Journal of Contemporary African Legal Studies 153.
 O'Keefe R, 'Universal Jurisdiction: Clarifying the Basic Concept' (2004) 2 Journal of International Criminal Justice 735.
 Philippe X, 'The Principles of Universal Jurisdiction and Complementarity: How Do the Two Principles Intermesh?' (2006) 88 International Review of the Red Cross 375.
 Pogge TW, 'Rawls on International Justice' (2001) 51 The Philosophical Quarterly (1950-) 246.
 Roht-Arriaza N, 'Institutions of International Justice' (1999) 52 Journal of International Affairs 473.

Rugeiyamu R and Mustafa Nguyahambi A, 'Advocacy Non-Governmental Organisations (NGOs) Resiliency to Shrinking Civic Space in Tanzania' (2023) 6 Journal of Humanities and Applied Social Sciences 259.

Ryerson C, Pinkert D and Kelly A, 'Seeking Justice: The State of Transnational Corporate Accountability' (2022) 132 The Yale Law Journal 787.

Shaw MN, 'The International Court of Justice: A Practical Perspective' (1997) 46 International and Comparative Law Quarterly 831.

Sohn LB, 'The New International Law: Protection of the Rights of Individuals rather than States' (1982) 32 American University Law Review 1.

Solera O, 'The Definition of the Crime of Aggression: Lessons Not-Learned' (2010) 42 Case Western Reserve journal of international law 801.

Stahn C, 'The Future of International Criminal Justice' (2009) 4 Hague Justice Journal 257.

Van Schaack B, 'The Definition of Crimes against Humanity: Resolving the Incoherence' (1998) 37 Columbia Journal of Transnational Law.

Viñuales JE, 'Impunity: Elements for an Empirical Concept' (2007) 25 Minnesota journal of law & inequality 115.

Wyngaard RG, 'The South African NPO Crisis: Time to Join Hands Changing Legal Environments for Civil Society Organisations' (2013) 15 International Journal of Not-for-Profit Law 5.

Reports

Amnesty International, 'Annual Report 1969-1970' (1970).

Amnesty International, 'Tanzania: A Chance to Priorities Human Rights - Amnesty International Submission for the Universal Periodic Review, 39th Session of the UPR Working Group' (2021).

Amnesty International, *Report on Torture* (2nd edn., Gerald Duckworth & Co Ltd 1975).

Bryceson DF, 'Dar Es Salaam as a "Harbour of Peace" in East Africa: Tracing the Role of Creolized Urban Ethnicity in Nation-State Formation' (The United Nations University World Institute for Development Economics Research (UNU-WIDER) 2010).

CIVICUS: World Alliance for Citizen Participation and DefendDefenders (East and Horn of Africa Human Rights Defenders Project), 'Tanzania: Joint Submission to the UN Universal Periodic Review - 39th Session of the UPR Working Group' (2021).

CIVICUS: World Alliance for Citizen Participation, 'State of Civil Society 2011' (2012).

CIVICUS: World Alliance for Citizen Participation, Human Rights Institute of South Africa (HURISA) and Centre for the Study of Violence and Reconciliation (CSV), 'Republic of South Africa: Joint Submission to the UN Universal Periodic Review - 41st Session of the UPR Working Group' (2022).

Commission On Global Governance, *Our Global Neighborhood: The Report of the Commission on Global Governance*. (Oxford University Press 1995).

Commonwealth Human Rights Initiative, 'Tanzania under Review by United Nations Universal Periodic Review: Recommendations Regarding Justice Matters'.

Danish Refugee Council, 'The Danish Refugee Council's Submission to the Special Rapporteur's Report on Pushback Practices and Their Impact on the Human Rights of Migrants' (2021).

Dicker R and Keppler E, 'Beyond the Hague: The Challenges of International Justice' (Human Rights World Report 2004).

Freedom House, 'South Africa: Freedom in the World 2024 Country Report' (2024).

Human Rights Institute of South Africa (HURISA), 'Enabling Environment National Assessment: South Africa Country Report' (2018).

Human Rights Institute of South Africa (HURISA), 'Republic of South Africa Joint Civil Society Submission to the UN Universal Periodic Review (UPR)' (2022).

Human Rights Watch, 'Tanzania 2018 Human Rights Report Executive Summary' (2018).

Human Rights Watch, 'The Human Rights of Undocumented Migrants, Asylum Seekers and Refugees in South Africa - Appendix A: South Africa's Obligation under International and Domestic Law' (1997).

International Commission of Inquiry, 'Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General: Pursuant to Security Council Resolution 1564 of 18 September 2004' (2005).

Jensen MW, 'Iwgia Report on the Tanzania UPR Process' (2011).

Legal and Human Rights Centre, 'Tanzania Human Rights Report 2018' (2018).

Legal and Human Rights Centre, 'Tanzania Human Rights Reports 2009' (2009).

National Planning Commission, 'National Development Plan 2030 Our Future-Make It Work' (2012).

Ngandu S and Mtola S, 'Typologies of Civil Society in South Africa: A Critical Review and Analysis of the Characteristics of the Non-Profit Sector: Final Report' (2019).

Nyeko O, "'As Long as I Am Quiet, I Am Safe" - Threats to Independent Media and Civil Society in Tanzania' (Human Rights Watch 2019).

Tanzania Human Rights Defenders Coalition (THRDC), 'A General Report on the NGOs' Verification Process in Tanzania - a Report to Provide for the NGOs Verification Process in Tanzania, and the Participation of CSOs in the Process' (2017).

Tanzania Human Rights Defenders Coalition (THRDC), 'Situation Report on Human Rights Defenders and Civic Space in Tanzania' (2023).

Tanzania Human Rights Defenders Coalition (THRDC), 'Universal Periodic Review Implementation Report: Implementation Status of the 107 Accepted Tanzania UPR Recommendations' (2015).

Ternström B, Ngido E and Makongo J, 'Tanzania Human Rights Defenders' Coalition Mid-Term Review Final Report' (Nordic Morning 2021).

United Nations Reporting Initiative on Climate Change, Health, Water and the Environmental, Viñuales JE, 'Impunity: Elements for an Empirical Concept' (2007) 25 Minnesota journal of law & inequality 115.

wa Mutua M, 'The African Human Rights System: A Critical Evaluation' (United Nations Development Programme 2000).

Wazambi F, 'Tanzania Human Rights Report 2023' (2023).

Zasekhaya B and others, 'The State of Protest Report: Right2Protest Project Report on the State of Protest in South Africa' (2020).

Papers

Bhat SB and Hartmann D, 'A Review of the Procedures and Processes to Start-up a Non-Profit Organisation (NPO) under South African Law with Special Reference to the NPO Act 71 of 1997 (the NPO Act)' (Paper 2014).

Du Plessis M, 'South Africa's International Criminal Court Act Countering Genocide, War Crimes and Crimes against Humanity' (ISS Paper 172 2008).

Du Plessis M, Louw A and Maunganidze O, 'African Efforts to Close the Impunity Gap: Lessons for Complementarity from National and Regional Actions' (ISS Paper 241 2012).

Fox J, 'Civil Society and Political Accountability: Propositions for Discussion' (2023).

International Criminal Court, 'Discussion Paper on the Crime of Aggression Proposed by the Chairman' (2009).

Patrick Broache M, 'Bringing Home Rome: Explaining the Domestication of the Rome Statute of the International Criminal Court' *The Social Science Research Network* (2015).

Volmink J and Van der Elst L, 'The Evolving Role of 21 St Century Education NGOs in South Africa: Challenges and Opportunities' (Paper 2017).

Speeches

Bachelet M, 'Global Human Rights Update' (45th session of the Human Rights Council, 14 September 2020) <https://www.ohchr.org/en/2020/09/her-global-human-rights-update-bachelet-calls-urgent-action-heighten-resilience-and-protect?LangID=E&NewsID=26226> accessed 21 September 2024.

Bachelet M, 'Strengthening Accountability and Justice for Serious Violations of International Law' (United Nations Security Council High-level Open Debate 2 June 2022) <https://www.ohchr.org/en/statements/2022/06/strengthening-accountability-and-justice-serious-violations-international-law> accessed 21 March 2024.

Hague RHW, 'International Law and Justice in a Networked World' (9 July 2012) <https://www.gov.uk/government/speeches/international-law-and-justice-in-a-networked-world> accessed 24 February 2024.

Websites

Amnesty International, 'International Justice' (Amnesty.org 2019) <https://www.amnesty.org/en/what-we-do/international-justice/> accessed 24 February 2024.

Amnesty International, 'Tanzania: Planned Law Amendments to Prevent Solidarity Lawsuits Must Be Rejected' (10 June 2020) <https://www.amnesty.org/en/latest/news/2020/06/tanzania-planned-law-amendments-to-prevent-solidarity-lawsuits-must-be-rejected/> accessed 21 September 2024.

Amnesty International, 'Tanzania: Withdrawal of Individual Rights to African Court Will Deepen Repression' (Amnesty International, 2 December 2019) <https://www.amnesty.org/en/latest/press-release/2019/12/tanzania-withdrawal-of-individual-rights-to-african-court-will-deepen-repression/#:~:text=The%20Tanzanian%20government%20has%20withdrawn> accessed 16 July 2024.

BBC, 'Omar Al-Bashir: Sudan's Ousted President' *BBC News* (14 August 2019) <https://www.bbc.com/news/world-africa-16010445> accessed 12 September 2024.

Brands-Kehris I, 'The Role of UN-Created Accountability Mechanisms in the Global Flight against Impunity: What's Next?' (20 January 2021) <https://www.ohchr.org/en/statements/2021/01/role-un-created-accountability-mechanisms-global-flight-against-impunity-whats> accessed 21 March 2024.

B'TSELEM, 'The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism' (B'TSELEM 2016) https://www.btselem.org/sites/default/files/publications/201605_occupations_fig_leaf_eng.pdf accessed 25 March 2024.

Cassese A, 'Affirmation of the Principles of International Law Recognized by the Charter of the Nürnberg Tribunal General Assembly Resolution 95 (I)' (*legal.un.org* 11 December 1946) https://legal.un.org/avl/ha/ga_95-I/ga_95-I.html accessed 16 June 2024.

CIVICUS: World Alliance for Citizen Participation, 'Crackdown on Activists, Critical Media, Dissident Voices Intensifies in Tanzania' (*Civics Monitor*, 2023) <https://monitor.civics.org/explore/crackdown-activists-critical-media-intensifies-tanzania/> accessed 21 September 2024.

DefendDefenders (East and Horn of Africa Human Rights Defenders Project), 'Tanzania: Respect the Right to Freedom of Association' (24 August 2020) <https://defenddefenders.org/tanzania-respect-the-right-to-freedom-of-association/> accessed 21 September 2024.

Eurojust, ‘Documenting International Crimes and Human Rights Violations for Criminal Accountability Purposes: Guidelines for Civil Society Organisations | Eurojust | European Union Agency for Criminal Justice Cooperation’ (www.eurojust.europa.eu 21 September 2022) <https://www.eurojust.europa.eu/publication/documenting-international-crimes-and-human-rights-violations> accessed 21 March 2024.

Grassroots Justice Network, ‘Zimbabwe Exiles Forum’ (2016) <https://grassrootsjusticenetwork.org/connect/organisation/zimbabwe-exiles-forum/> accessed 22 October 2024.

Honstein E, ‘South Africa’ (*International Center for Not-For-Profit Law*, 13 September 2024) <https://www.icnl.org/resources/civic-freedom-monitor/south-africa> accessed 25 September 2024.

Human Rights Watch, ‘International Justice’ (*Human Rights Watch* 25 September 2019) <https://www.hrw.org/topic/international-justice> accessed 24 February 2024.

International Criminal Court, ‘Al Bashir Case’ (*Icc-cpi.int*, 2019) <https://www.icc-cpi.int/darfur/albashir> accessed 12 August 2024.

International Criminal Court, ‘Al-Bashir Case: ICC Appeals Chamber Confirms Jordan’s Non-Cooperation but Reverses the Decision Referring It to the ASP and UNSC’ (6 May 2019) <https://www.icc-cpi.int/news/al-bashir-case-icc-appeals-chamber-confirms-jordans-non-cooperation-reverses-decision> accessed 7 October 2024.

International Criminal Court, ‘Assembly of States Parties to the Rome Statute of the International Criminal Court’ (2 November 2017) https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP16/ASP16-List-StateParties_ObserverStates_InvitedStates-ENG.pdf accessed 24 October 2024.

International Criminal Court, ‘Darfur, Sudan’ (2019) <https://www.icc-cpi.int/darfur> accessed 12 September 2024.

Jezard A, ‘Who and What Is “Civil Society?”’ (*World Economic Forum* 23 April 2018) <https://www.weforum.org/agenda/2018/04/what-is-civil-society/> accessed 30 March 2024.

Lawyers for Human Rights, ‘About Us’ <https://www.lhr.org.za/about-us/> accessed 25 September 2024.

Legal and Human Rights Centre, ‘Tanzania Should Ratify the United Nations Convention against Torture’ (*humanrights.or.tz* 26 June 2019) <https://humanrights.or.tz/en/news-events/tanzania-should-ratify-the-united-nations-convention-against-torture> accessed 16 July 2024.

Madenge, ‘Tanganyika African National Union (TANU) Bio’ (*UnitedRepublicofTanzania.com* 10 February 2021) <https://unitedrepublicoftanzania.com/history-of-tanzania/tanganyika/tanganyika-african-national-union-tanu-bio-political-party/> accessed 9 July 2024.

Media Council of Tanzania, ‘CoRI Pushes for More Amendments of MSA 2016’ (*mct.or.tz*, 2024) <https://mct.or.tz/msaamendments/> accessed 16 July 2024.

Mhina N, ‘Why Amendment of Media Services Act Hasn’t Gone Far Enough’ (*The Citizen*, 29 May 2024) <https://www.thecitizen.co.tz/tanzania/oped/why-amendment-of-media-services-act-hasn-t-gone-far-enough-4640022> accessed 16 July 2024.

Ngurumo A, ‘Tanzanian Civil Societies, Churches in Disarray amidst Proposed Bill’ (*Sauti Kubwa*, 21 June 2019) <https://sautikubwa.org/tanzanian-civil-societies-churches-in-disarray-amidst-proposed-bill/> accessed 16 July 2024.

Parliamentarians for Global Action, ‘Tanzania and the Rome Statute’ (6 June 2023) <https://www.pgaction.org/ilhr/rome-statute/tanzania.html> accessed 16 July 2024.

REDRESS, ‘NGOs Urge Court of Appeal to Preserve Access to Justice to Torture Victims in UK Rendition Case’ (*REDRESS* 21 July 2014) <https://redress.org/news/ngos-urge-court-of->

[appeal-to-preserve-access-to-justice-to-torture-victims-in-uk-rendition-case/](#) accessed 11 April 2024.

Rendition Research Team, ‘Abdel Hakim Belhadj and Fatima Bouchar - the Rendition Project’ (www.therenditionproject.org.uk) (2012) https://www.therenditionproject.org.uk/prisoners/belhadj_bouchar.html accessed 11 April 2024.

Sonke Gender Justice, ‘About Us’ (2011) <https://genderjustice.org.za/about-us/about-sonke/> accessed 25 September 2024.

Southern Africa Litigation Centre, ‘Home’ <https://www.southernafricalitigationcentre.org/> accessed 6 June 2024.

Southern Africa Litigation Centre, ‘International Law Demands That Omar al Bashir Be Handed over to the ICC’ (12 April 2019) <https://www.southernafricalitigationcentre.org/news-release-international-law-demands-that-omar-al-bashir-be-handed-over-to-the-icc/> accessed 16 August 2024.

Tanzania Human Rights Defenders Coalition (THRDC), ‘Cancellation of THRDC’s Activities’ (X (formerly Twitter), 18 August 2020) <https://x.com/THRDCOALITION/status/1295662249751830530> accessed 21 September 2024.

TEN MET, ‘Compendium of Laws Governing Civil Society Organisations in Tanzania’ (20 March 2019) <https://tenmet.or.tz/compendium-of-laws-governing-civil-society-organisations-in-tanzania/> accessed 12 July 2024.

The Centre for International Law Research and Policy, ‘Commentary Rome Statute: Part 2, Articles 11-21: Case Matrix Network’ (www.casematrixnetwork.org) <https://www.casematrixnetwork.org/cmn-knowledge-hub/icc-commentary-clicc/commentary-rome-statute/commentary-rome-statute-part-2-articles-11-21#:~:text=The%20main%20content%20of%20Article> accessed 14 May 2024.

The Citizen, ‘Registrar to Verify All NGOs’ (16 April 2021) <https://www.thecitizen.co.tz/News/Registrar-to-verify-all-NGOs/1840340-4050130-14lgg2c/index.html> accessed 21 September 2024.

The Department of Military Veterans, ‘National Development Plan 2030’ (20 December 2024) <http://www.dmv.gov.za/documents/national-development-plan.htm> accessed 22 December 2024.

Treatment Action Campaign, ‘About Us’ <https://www.tac.org.za/about/> accessed 25 September 2024.

United Nations International Criminal Tribunal for Rwanda, ‘The ICTR in Brief’ (*Irmct.org*, 2013) <https://unictr.irmct.org/en/tribunal> accessed 16 July 2024.

United Nations Treaty Body Database, ‘Ratification Status for South Africa’ (*Ohchr.org* 2019) https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=162&Lang=EN accessed 22 October 2024.

United Nations Treaty Body Database, ‘Ratification Status for United Republic of Tanzania’ (*Ohchr.org* 2019) https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=186&Lang=EN accessed 22 October 2024.

United Nations Treaty Collection, ‘Convention on the Elimination of All Forms of Discrimination against Women’ (*Un.org* 2019) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en accessed 22 October 2024.

United Nations Treaty Collection, ‘Convention on the Rights of Persons with Disabilities’ (*Un.org* 2009) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en accessed 22 October 2024.

United Nations Treaty Collection, 'Convention on the Rights of the Child' (*treaties.un.org*) https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4 accessed 22 October 2024.

United Nations Treaty Collection, 'International Convention for the Protection of All Persons from Enforced Disappearance' (*treaties.un.org*) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=en accessed 22 October 2024.

United Nations Treaty Collection, 'International Convention on the Elimination of All Forms of Racial Discrimination' (*Un.org* 2009) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en accessed 22 October 2024.

United Nations Treaty Collection, 'International Covenant on Civil and Political Rights' (*Un.org* 2019) https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg_no=IV-4&src=IND accessed 22 October 2024.

United Nations Treaty Collection, 'International Covenant on Economic, Social and Cultural Rights' (*Un.org* 2009) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en accessed 22 October 2024.

United Nations Treaty Collection, 'Rome Statute of the International Criminal Court' (*Un.org* 2020) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=en accessed 22 October 2024.

United Nations, 'Responsibility of States for Internationally Wrongful Acts' (2001) https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf accessed 21 March 2024.

United Nations, 'War Crimes' (*Un.org*) <https://www.un.org/en/genocideprevention/war-crimes.shtml> accessed 20 June 2024.

van Aggelen, 'Dinah Shelton, Remedies in International Human Rights Law' 431 https://brill.com/view/journals/nord/71/3/article-p431_2.xml?ebody=previewpdf-96220 accessed 21 March 2024.

Vignoli ME, 'ICC Reporting Key to Catalyze National Justice' (*Human Rights Watch* 19 March 2024) <https://www.hrw.org/news/2024/03/19/icc-reporting-key-catalyze-national-justice> accessed 25 March 2024.

Vignoli ME, 'The Long – yet Still Uneven – Arc of International Justice' (*Opinio Juris* 27 January 2023) <https://opiniojuris.org/2023/01/27/the-long-yet-still-uneven-arc-of-international-justice/> accessed 25 March 2024.

Appendix



UNIVERSITY OF CAPE TOWN
YUNIBESITHI YASEKA PA • UNIVERSITEIT VAN KAAPSTAD

PRE-SCREENING QUESTIONNAIRE OUTCOME LETTER

STU-LAW-2024-PSQ001275

2024/10/16

Dear Joanna Rahmatoulay Bakilana,

Your Ethics pre-screening questionnaire (PSQ) has been evaluated by your departmental ethics representative. Based on the information supplied in your PSQ, it has been determined that you do not need to make a full ethics application for the research project in question.

You may proceed with your research project titled:

Civil Society Engagement in the Fight against Impunity for International Crimes: A Comparative Analysis Between the United Republic of Tanzania and the Republic of South Africa

Please note that should aspect(s) of your current project change, you should submit a new PSQ in order to determine whether the changed aspects increase the ethical risks of your project. It may be the case that project changes could require a full ethics application and review process.

Regards,

Faculty Research Ethics Committee