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A Competitive Analysis of the Protection of Freedom of Association in Botswana and Zimbabwe

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***Abstract*: This study compares the protection of free association in Botswana and Zimbabwe. It explores the legislative frameworks in both nations for defending the right to free association and analyses how these frameworks are put into practise. The analysis reveals that while both countries recognize freedom of association as a fundamental right, there are significant differences in how this right is protected and upheld. Botswana has a more enabling environment for civil society organizations and trade unions, with a vibrant and independent civil society sector. In contrast, Zimbabwe has a more restrictive legal and political environment, with a history of government crackdowns on civil society and trade unions. The paper emphasises the importance of both countries strengthening their legal frameworks for protecting the right to free association and ensuring that these frameworks are put into practise so that civil society organisations and trade unions can operate freely and effectively in the pursuit of human rights and social justice.**

***Keywords:* Freedom of Association, Human Rights, Civil Society Organisations, Trade Unions, Botswana and Zimbabwe.**

1. INTRODUCTION

Botswana is a stable democracy and has a relatively good record of protecting human rights, including freedom of association. The country has a vibrant civil society, with various organizations and associations active in promoting human rights and social justice. The right to freedom of association is guaranteed under the Botswana Constitution, which includes the ability to create and join labour unions, political parties, and other groupings. In practise, these rights are mostly upheld, and the government rarely interferes with the operations of civil society organisations. Trade unions are active and play an important role in preserving workers' rights. There are also numerous non-governmental organisations (NGOs) and community-based organisations that focus on a variety of problems such as human rights, gender equality, and environmental protection.[1] The government generally allows these organizations to operate freely and express their views without interference

Despite this relatively good record of protecting freedom of association, there have been some concerns in recent years. In 2017, the Botswana government passed the Public Service Act, which prohibits civil servants from being members of political parties or organizations. This has been criticized by some as a restriction on freedom of association, as it limits civil servants' ability to engage in political activity and association. As a result, this study did a comparative examination of the protection of free association in Botswana and Zimbabwe. Botswana and Zimbabwe are two African countries that have had varying degrees of success in defending free association. We shall examine and contrast the protection of free association in these two countries in this competitive analysis.

[1] Khumalo, Njabulo, Sindiso Bhebhe, and Olefhile Mosweu. "A Comparative Study of Freedom of Information Legislation in Botswana, South Africa, and Zimbabwe." Mousaion 34, no. 4 (2017): 108–131.

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2. PROTECTION OF FREEDOM OF ASSOCIATION

The right to freedom of association is a fundamental human right recognised by numerous international human rights instruments and included in many countries' constitutions. This right is necessary for a democratic society to function since it allows individuals to organise, express their opinions, and advocate for their own interests[2].

The right to form and join organisations, including labour unions, political parties, and civil society organisations, as well as the right to take part in collective action, including rallies and strikes, are all covered under the protection of freedom of association. It also involves the freedom to express one's opinions without worrying about reprisals or being persecuted.

The protection of freedom of association is particularly important for marginalized groups and individuals who may face discrimination or other challenges in exercising their rights. For example, trade unions can help protect workers' rights and ensure that they are not exploited by employers, while civil society organizations can advocate for the rights of marginalized groups, such as women, LGBTQ+ individuals, and ethnic and religious minorities[3].

However, the protection of freedom of association is not always guaranteed, and individuals and organizations may face restrictions on their right to associate and express their views. Governments may pass laws that limit the activities of certain groups or impose conditions on their operations, while employers may intimidate or retaliate against workers who seek to join unions or engage in collective action.

Human Rights on Protection of Freedom Of Association

In international legal documents like the African Charter on Human and People's Rights (ACHPR), the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration of Human Rights (UDHR), human rights are recognised as a fundamental component of democratic society. One of the most important human rights is the freedom of association, which is essential for the fulfilment of other rights including the freedom of expression, assembly, and association[4]. This right is important for the promotion of democratic participation and for the protection of vulnerable communities and minorities.

The protection of freedom of association is essential to ensure that individuals and groups are free to form and join organizations that promote their interests and values. Civil society organizations, trade unions, and other social groups provide important services, such as advocacy and monitoring of government activities. They also offer a platform for individuals to participate in public debates and challenge policies that may be detrimental to their communities. In this way, the protection of freedom of association is a critical component of a functioning democratic society.

Many international human rights treaties recognise the right to freedom of association. For instance, the UDHR's Article 20 acknowledges the right to freedom of peaceful assembly and association, but the ICCPR's Article 22 expands on this right by declaring that everyone has the right to freedom of association with others, including the right to establish and join trade unions[5]. The right to freedom of association is also recognised in Article 10 of the ACHPR, including the freedom to start and join unions and other groups.

However, the protection of freedom of association is not always guaranteed in practice, as seen in the case of Zimbabwe. As previously discussed, the Zimbabwean government has used various tactics to limit the activities of civil society groups and trade unions. These include passing laws that restrict their operations, intimidating activists, and raiding their offices. Such measures limit people's and groups' capacity to take part in public discourse and oppose laws that might be harmful to their communities. Additionally, they make it harder for people to start and join groups that advance their interests and values.

The realisation of other human rights, such as the right to freedom of expression, assembly, and association, depends on the preservation of freedom of association. The development of democratic participation as well as the defence of minorities

2 Ulrich K, Preuß. “Part VII Rights, Ch.45 The rights to petition, assemble, and associate are known as associative rights. The Oxford Handbook of Comparative Constitutional Law (2012).
3 Khumalo and other, 2017 (n 2 above)
4 Vincent–Jones, Peter. The question "Regulating Government by Contract: Towards a Public Law Framework?" The Modern Law Review 65, no. 4 (2002): 611–628.
5 Ulrich, 2012 (n 2 above)

and vulnerable populations depend on the right to freedom of association. States must consequently uphold and safeguard this right in actuality. States must do this by fostering an atmosphere that allows for civil society organisations and labour unions to function freely and engage in their activities without fear of intimidation or retaliation.

3. CONSTITUTION OF BOTSWANA ON FREEDOM OF ASSOCIATION

The right to freedom of association is one of the fundamental human rights guaranteed by the Botswana Constitution, which is the country's supreme law. This right is protected by a number of clauses in the constitution, including Section 13, which ensures the right to personal liberty, Section 14, which ensures the right to freedom of conscience, and Section 15, which ensures the right to freedom of expression, including the right to form and join associations[6].

The Botswana Constitution states in Section 13 that "no person shall be deprived of his personal liberty except as may be authorised by law in the following cases, namely (d) for the purpose of preventing the spread of an infectious or contagious disease; (e) for the purpose of preventing that person's unlawful entry into Botswana, or for the purpose of enacting their expulsion, extradition, or other lawful removal from Botswana, or for the prevention of their unlawful entry This clause acknowledges the basic significance of personal liberty and offers a few narrow exceptions to that rights, which in some circumstances may entail restrictions on the freedom to associate.

The right to freedom of conscience is protected under Section 14 of the Botswana Constitution, which also grants the freedom to "manifest and propagate his religion or belief in worship, teaching, practise, and observance." The importance of the freedom to possess and express one's opinions, including those connected to associating with those who hold the same beliefs, is acknowledged by this clause. The ability to organise and join associations, including religious organisations, is a part of the freedom of conscience. The right to freedom of expression is protected under Section 15 of the Botswana Constitution, which states that people have the right to "hold opinions and to receive and impart ideas and information without hindrance.[7] The importance of the right to express oneself, which may include the right to create and join associations such as political parties, labour unions, and other civil society organisations, is acknowledged by this clause.

The Botswana Constitution additionally expressly recognises the right to establish and join associations in addition to these broad rights. According to Section 13(3), "Every Person Shall Be Entitled To Assemble And To Demonstrate Together With Other Persons And To Enjoy The Protection Of The State While So Doing." This clause acknowledges the freedom of assembly, which is integral to the freedom of association. Section 13(4) further states that "nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision - (a) which is reasonably required in the interests of defence, public safety, public order, public morality, or public health; or (b) which is reasonably required for the purpose of protecting the rights or freedoms of other persons; or (c) which imitates this section[8]."

Protection of freedom of association in Botswana

Botswana offers rather robust protection for free association. The right to freedom of association is guaranteed under the country's constitution, and the government generally upholds this right in practise. Trade unions, political parties, and civil society organisations are active and free to operate, fighting for a variety of topics such as workers' rights, human rights, and environmental protection.

Botswana has a robust civil society sector, with numerous non-governmental organisations and community-based organisations addressing a wide range of concerns. The government enables these organisations to function freely, and they are free to voice their opinions. The Botswana Centre for Human Rights is a well-known human rights organisation that strives to promote and safeguard the country's civil and political rights.

6 Ulrich, 2012 (n 3 above)
7 Ulrich, 2012 (n above 4)
8 Tshosa, Onkemetse. “Colonial Heritage Retained: Zimbabwe and Botswana.” National Law and International Human Rights Law (2017): 49–77.

Trade unions are also active and play a significant role in protecting the rights of workers. The largest trade union federation in the country, the Botswana Federation of Trade Unions, represents a wide range of workers across different sectors and engages in advocacy and dialogue with the [9]government to improve labor laws and regulations.

In recent years, the government has held consultations with civil society organisations on a variety of national problems, including constitutional revision and labour legislation reform. These consultations have been viewed as a positive step forward in the country's efforts to provide a free environment for civil society organisations. The right to peaceful assembly is another key part of the preservation of freedom of association in Botswana. The constitution recognises everyone's freedom to congregate and demonstrate peacefully, without weaponry, and without interfering with the rights of others. In practise, this freedom has been preserved, with several peaceful marches and demonstrations taking place throughout the country without major interference from authorities.

However, there have been some concerns raised by human rights organizations regarding the restrictive laws that have been passed in recent years, which may limit the ability of civil society organizations and trade unions to operate freely. For example, the Societies Amendment Act of [10]2020 requires all civil society organizations to register with the government and comply with certain requirements, such as providing detailed financial reports. Critics have argued that this law may be used to restrict the activities of civil society organizations and limit their ability to advocate for human rights and social justice. The Public Service Act, passed in 2017, prohibits civil servants from being members of political parties or organizations, which has been criticized as a limitation on their freedom of association. It will be important to monitor these developments in the future to ensure that the right to freedom of association continues to be protected in Botswana.

4. CONSTITUTION OF ZIMBABWE ON FREEDOM OF ASSOCIATION

As enshrined in Section 58 of the Bill of Rights, Zimbabwe's constitution recognises the right to freedom of association. According to this provision, "every person has the right to freedom of assembly and association, as well as the right not to assemble or associate with others." Individuals have the freedom to organise and join organisations, including as political parties, trade unions, and civil society groups, without fear of persecution or harassment under this fundamental right.[11].

Furthermore, Section 58 of the constitution outlines the specific rights guaranteed by free association. These include the right to join or form an association, the right to participate in an association's activities, the right to leave an association, and the right not to be coerced into joining an association. This clause also bans any person or entity from coercing an individual into joining or remaining a member of any organisation against their will[12].

Zimbabwe's constitution, as specified in Section 61 of the Bill of Rights, also recognises the right to free expression. This encompasses the freedom to seek, receive, and impart information and ideas, as well as the freedom of the press[13]. This right is inextricably linked to the right to free association, because individuals and organisations must be able to express their thoughts and opinions in order to advocate for their interests and engage in public discourse.

However, despite these constitutional protections, the freedom of association in Zimbabwe has been restricted in practice in recent years. The government has used various tactics to limit the activities of civil society groups and trade unions, including passing laws that restrict their operations, intimidating activists, and raiding their offices. There have also been reports of violence and harassment against opposition political parties and their supporters, which has further restricted the freedom of association in the country.

Protection of freedom of association in Zimbabwe

The right to freedom of association is a fundamental human right recognised by numerous international human rights instruments and included in Zimbabwe's constitution. This right is necessary for a democratic society to function since it allows individuals to organise, express their opinions, and advocate for their own interests.

9 Tshosa, 2017 (n 2 above)
10 Nicola, Wenzel. “International Protection, Freedom of Opinion and Expression. Max Planck Encyclopedia of Public International Law (2013).
11 Fombad, Charles Manga. “The Protection of Free Expression in Southern African Public Service Media: A Botswanan Perspective.” The Modern Law Review 65, no. 5 (2002): 649–675.
12 Tshosa, 2017 (n 3 above)
13 Elliott, Mark, and Robert Thomas. “19. Freedom of Expression.” Public Law (2017).

In Zimbabwe, the right to create and join organisations such as trade unions, political parties, and civil society groups is protected, as is the right to engage in collective action such as protests and strikes. It also includes the freedom to express oneself without fear of reprisal or persecution.

However, in recent years, Zimbabwe's protection of freedom of association has become increasingly limited. The government has employed a variety of strategies to curtail the activities of civil society organisations and trade unions, including drafting legislation restricting their operations, harassing activists, and raiding their offices[14]. There have also been instances of violence and harassment directed at opposing political parties and their followers, severely restricting the country's freedom of association.

The government, for example, passed the Maintenance of Peace and Order Act (MOPA) in 2019, which superseded the Public Order and Security Act (POSA). The new law gives cops broad authority to prevent or disperse public gatherings, including peaceful marches and demonstrations. This has hampered the ability of civil society organisations and opposition political parties to stage public demonstrations and advocate for their causes[15].

Furthermore, in 2020, the government will implement a contentious new law governing non-governmental organisations (NGOs). The law requires non-governmental organisations (NGOs) to register with the government, reveal their funding sources, and submit regular activity reports. This has been criticised as an attempt to control and limit the operations of the country's civil society organisations.

It is critical for the government to uphold the constitution and foster an atmosphere in which individuals and groups can associate and express their opinions without fear of persecution. The government must ensure that freedom of association is protected in law and practise, as well as foster an atmosphere in which individuals and organisations can freely associate and express their opinions[16]. This involves defending workers' rights to join unions and engage in collective action, ensuring the independence of civil society organisations, and creating a safe place for individuals and organisations to express themselves without fear of punishment.

5. COMPETITIVE ANALYSIS OF THE PROTECTION OF FREEDOM OF ASSOCIATION IN BOTSWANA AND ZIMBABWE

Botswana and Zimbabwe are Southern African neighbours with a shared history of colonisation and independence struggle. Both countries have constitutional protections for free association, but in practise, this right has been challenged. A comparison of freedom of association protection in Botswana and Zimbabwe reveals that, while Botswana generally respects this right, Zimbabwe has suffered significant erosion of this right in recent years[17].

In Botswana, the protection of freedom of association is generally respected in practice. Civil society groups and trade unions are able to operate relatively freely and are rarely subjected to interference by the state. In Botswana, for example, trade unions organised a countrywide strike in 2019 to demand greater pay and improved working conditions, and the government accepted their right to participate in collective action. Similarly, civil society organisations are free to do advocacy activity and monitor government operations. For example, in Botswana, a variety of civil society organisations have been instrumental in lobbying for the rights of marginalised communities such as the San people.

In contrast, in recent years, Zimbabwe has drastically reduced the protection of freedom of association. The government has employed a variety of techniques to curtail the activities of civil society organisations and trade unions, such as drafting legislation restricting their operations, harassing activists, and raiding their offices. For example, in 2019, Zimbabwean police forcefully dispersed a peaceful protest organised by the government-banned opposition party, MDC[18]. Similarly, the Zimbabwean government established a non-governmental organisation regulation law in 2020, requiring them to register with the government, reveal their funding sources, and submit regular reports on their operations. This has been criticised as an attempt to control and limit the operations of the country's civil society organisations.

14 Vincent–Jones, 2002 (n 2 above)
15 Thomas, A Mensah. “International Law, Regional Developments: Africa.” Max Planck International Law (2006). Encyclopedia of Public
16 Nicola and others, 2013 (n 2 above)
17 Fombad and Charles Manga, 2002 (n 2 above)
18 Elliott and others, 2017 (n 2 above)

Furthermore, the Zimbabwean government has been accused of using violence and intimidation to suppress opposition political parties and their supporters. For example, in the run-up to the 2018 general elections, there were reports of violence and intimidation against opposition party members and supporters. Similarly, in 2020, there were reports of police harassment and intimidation of opposition members of parliament, including the arrest of several members of the MDC Alliance.

In Botswana, civil society organizations and trade unions are generally able to operate freely and carry out their activities without fear of intimidation or persecution. This is due in part to the country's strong democratic tradition and independent judiciary. However, there have been some concerns raised by human rights organizations regarding the restrictive laws that have been passed in recent years, which may limit the ability of civil society organizations and trade unions to operate freely. For example, the Public Service Act of 2010 limits the ability of public servants to participate in politics and engage in other activities outside of their official duties.

In contrast, Zimbabwe has a more restrictive environment for civil society organizations and trade unions to operate in. As previously discussed, the government has used various tactics to limit the activities of these groups, including passing laws that restrict their operations, intimidating activists, and raiding their offices[19]. This has created a climate of fear and uncertainty for those seeking to form and join organizations that promote their interests and values.

Despite these differences, there have been some positive developments in both countries regarding the protection of the right to freedom of association. For example, in Botswana, the government has engaged in consultations with civil society organizations and trade unions on various issues, such as labor law reform. In Zimbabwe, there have been some court rulings that have affirmed the right of civil society organizations and trade unions to operate freely[20]. In terms of international obligations, both Botswana and Zimbabwe are party to various international human rights treaties that recognize the right to freedom of association. For example, both countries are party to the ICCPR and the ACHPR. This means that they have a legal obligation to respect and protect this right in practice.

While both Botswana and Zimbabwe have constitutional protections for freedom of association, the two countries have different experiences in the protection of this right in practice. Botswana has generally respected this right, while Zimbabwe has seen significant erosion of this right in recent years. The erosion of the protection of freedom of association in Zimbabwe is a cause for concern, as it limits the ability of individuals and organizations to advocate for their interests and engage in public debate, which is crucial for a functioning democracy[21].

6. CONCLUSIONS

The competitive examination of the protection of the right to freedom of association in Zimbabwe and Botswana, in particular, reveals notable variations in the actual implementation of this right in the two nations. While Zimbabwe has seen significant erosion of this right in recent years, Botswana has generally respected this right and allowed civil society organisations and trade unions to operate relatively freely. The Zimbabwean government has employed a number of strategies to restrict the operations of trade unions and civil society organisations, including enacting repressive legislation, harassing activists, and raiding their offices. The administration has also been charged with using violence and intimidation to repress members and supporters of opposition political groups.

Concern should be expressed over Zimbabwe's deteriorating protection of freedom of association, which makes it harder for people to organise and participate in civil society initiatives, participate in public discourse, and advocate for human rights. Additionally, it restricts citizens' ability to hold the government responsible and protest laws that have a negative impact on their neighbourhoods. A notable example of how the preservation of human rights can be fostered and upheld in a democratic society is provided by Botswana, which has a somewhat better track record when it comes to freedom of association.

The greatest methods for defending and advancing the right to freedom of association can be exchanged between the two nations. Asserting the preservation of this right in both nations and ensuring that the right to freedom of association is upheld in practise are roles that international human rights organisations and the international community may play.

19 Thomas, 2013 (n 2 above)

21 Elliott and others, 2017 (n 3 above)

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