

# ANALYSIS OF THE PROPOSED COMMITTEE STAGE AMENDMENTS TO THE PVO AMENDMENT BILL, 2021<sup>1</sup>

15 June 2022

## 1. Introduction

On 7 June 2022, the Minister of Public Service, Labour and Social Welfare submitted significant amendments to the gazetted 2021 Private Voluntary Organisations Amendment Bill (PVO Amendment Bill), on the National Assembly Order Paper. These amendments, which will be formally introduced by the Minister in Parliament at the Committee stage, materially alter the gazetted PVO Amendment Bill. Since December 2021, CSOs have presented oral and written submissions, including the **CSOs' Consolidated Analysis of the PVO Bill**, highlighting their concerns to the Parliament Legal Committee, Parliament Portfolio Committee on Public Service and at the public hearings convened in terms of section 141 of the Constitution. The concerns have also been raised at relevant meetings with the Minister of Justice, Legal and Parliamentary Affairs and officials within the Ministry of Public Service, Labour and Social Welfare. The proposed amendments do not address these concerns at all. All the rights issues raised in the **Consolidated Analysis** are still applicable to the proposed amended Bill, except the proposed amendments introduce even more restrictive provisions.

On 11 April 2022, during a consultative meeting with civil society organisations (CSOs) the Minister of Justice agreed to introduce various amendments such as;

- a. Introducing transitional provisions granting those CSOs currently operating lawfully but not registered as PVOs, six months to regularise their registration under the new Act;
- b. Reviewing the composition of the PVO Board to a manageable number and to be more representative of PVOs; and
- c. Reviewing and reducing the penal provisions.

On 12 April 2022, the Minister of Justice reported back to the National Assembly confirming that he had consulted with CSOs and stating that the authorities were willing to seriously consider suggestions to improve the composition of the PVO Board to ensure a fair representation of a cross-section of PVOs and CSOs. He also confirmed that he had agreed to consider amendments to the Bill to refine the Minister's powers to intervene in the operations of PVOs in a manner consistent with constitutional rights, especially the freedom of association. Finally, he confirmed that he had agreed to reform provisions criminalising the politicisation of charitable activities, so that PVOs do not operate in fear of being subjected to criminal prosecution.

Of note is that the amendments extensively revise the Bill, introducing new provisions that were not there when the Bill was taken for public hearings. This violates the public's constitutional right to participate in law making, as the authorities have a constitutional obligation to consider the views of the public in terms of section 141 of the Constitution. The nature of the amendments is summarised below.

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<sup>1</sup> This analysis has been developed by the CSOs Technical Committee members listed on page 6.

## 2. Analysis of Proposed Committee Stage Amendments

**2.1 Increased consolidation of power in the Registrar's office:** CSOs have called for self-regulation and independence of the sector, but the proposed amendments will concentrate even greater discretionary powers in the Office of the Registrar of PVOs. Clause 3 of the proposed amendments will repeal Part II of the PVO Act, removing the PVO Board and vesting all decision-making powers unilaterally in the Registrar, who is a member of the Public Service reporting to the Executive branch of government. The amendment will effectively transform the Registrar from an administrative official into an executive one, with extensive powers to receive, consider, determine, grant or reject applications for PVO registration. The Registrar will also be granted powers 'to promote and encourage coordination of PVOs with similar objects'. This will not only result in greater interference but will lead to effective capture of PVOs as they may be forced to work together with those that are deemed to be politically correct. The amendment does not stipulate the qualifications that should be possessed by the Registrar, or his or her appointment process. The Registrar is simply deemed to be the Director of Social Welfare, until another appointment is made. The Minister is granted the power to issue directives to the Registrar, which the Registrar is obliged to implement.

**2.2 Establishment of a Private Voluntary Organisations Forum:** Clause 3 of the proposed amendments provides for an annual Private Voluntary Organisations Forum to be convened and hosted by the Registrar for the purpose of discussing issues concerning PVOs. The purpose of the Forum is unclear, but appears to be to gather information from PVOs, monitor them, and reach resolutions that will impact on the work of PVOs. As the Forum will be entirely controlled by the Registrar, it is a significant departure from CSOs' call for independence and self-regulation. The participants list and agenda that will be adopted for these Forums is unclear, simultaneously allowing for exclusion of important entities and inclusion of those that may be unnecessary in PVO affairs. The section on the Forum also appears to have been copied from the Gender Commission Act, the Gender Commission being an independent commission, without considering its suitability or necessity in the context of regulating PVOs.

**2.3 New Principles governing PVOs:** The proposed amendments introduce a new Part IIIA regulating the Conduct of PVOs. Section 20A introduces Principles which will be used by the Registrar to determine whether or not a PVO is in compliance with Act. They are significant because they will impact the Registrar's determination of registration applications, applications for amendments to the particulars of registration, deregistration decisions, and imposition of civil penalty orders.

- *Funding:* The principles require PVOs to ascertain the identity of donors and sources of donations; to refuse and report any donations from "illegitimate" or "immoral" sources (no definition is provided for these, resulting in legal uncertainty and allowing for discrimination); to ensure every donation is used for the charitable objects for which the PVO is registered; to account for the manner in which funds are distributed and programmes implemented; and to use formal channels for the transmission of all funds.
- *Non-discrimination and political affiliation:* There are a number of non-discrimination principles, but the main focus is for PVOs not to "conduct themselves in a politically partisan

manner” and not to use “resources to benefit members of a particular affiliation or making any test of the political allegiance of its beneficiaries”. These provisions lack legal certainty. Organisations supporting victims of rights violations may be deemed to have violated this provision when they provide assistance to members of a particular political party that has been disproportionately affected by violations.

- *Cultural norms*: In addition to the requirement not to accept donations from “immoral” sources, PVOs are required to be sensitive to the “cultural values and norms” (these are not defined, and will be subjectively applied) of the community in which they operate; and to economically and socially benefit the community in which they operate.
- *Labour and employment*: The principles call for PVOs to prioritise employment of Zimbabwean citizens or permanent residents (this may result in discrimination against foreign workers), and to implement fair and safe labour practices.

**2.4 New registration requirements:** The amendments remove the previously proposed section 2(4) regulating registration of trusts. However, Clause 3C introduces a new section 6 with stricter and more immediate requirements for *trusts, bodies, associations of persons corporate or unincorporate, and any institutions* that are not exempt under the Act<sup>2</sup> that receive financial donations or collect contributions from the public to conduct prescribed charitable activities<sup>3</sup> to be registered as PVOs, failing which anyone associated with the unregistered organisation may be subjected to criminal sanctions as discussed below. A new provision is added which states that no person is permitted to collect contributions from the public except in terms of the Act, thus outlawing crowdfunding (for charitable and relief causes) as we have seen during times like Cyclone Idai, unless registered or temporary authority has been provided by the Registrar under the Act. The section introduces specific provisions for “sanctionable trusts” whom the Registrar suspects to be operating unlawfully to be dispatched with a written notice by the Registrar and requiring that the trust commence registration within 30 days, failing which the trustees are subject to criminal liability. There are no transitional provisions provided, meaning that organisations operating lawfully as trusts and associations will be rendered unlawful as soon as the Bill is passed into law, pending the Registrar’s determination of their application. There are also no time limits within which the Registrar must determine the application, meaning organisations could be left in limbo for a long time.

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<sup>2</sup> State or local authority institutions; Religious bodies conducting religious work; Educational trusts approved by the Minister; Associations acting exclusively for its members; Health institutions registered under the Health Professions Act; Organisations approved by the Minister to support hospitals or nursing homes; Political organisations conducting political activities; Zimbabwe Red Cross; and Trusts established by any enactment. Clause 2(a)(ii)C of the original Bill (which has been maintained) also exempts any trust registered with the High Court in terms of the new section (x), but confusingly the proposed amendments specifically state that even trusts registered at the High Court must register at PVOs.

<sup>3</sup> Assisting people with material, mental, physical or social needs; Providing charity to persons in distress; Supporting the destitute; Uplifting people’s standard of living; Providing funds for legal aid; Preventing cruelty and promoting welfare of animals; Collecting contributions for these purposes; and: Any other charitable objects that may be prescribed in regulations.

**2.5 Imposition of harsh criminal and civil penalties for vaguely-defined offences:** The new amendments introduce additional, excessively punitive, criminal and civil penalties for non-complying PVOs, as well as individual liability for trustees, employees and managers of PVOs, and anyone involved in the control of a PVO, as well as members of the public.

- Sections 6(4)-(5) provide for individual criminal liability for anyone involved in the management or control of an unregistered PVO, with a fine of up to level 12 and imprisonment of up to one year.
- Sections 6(7) imposes criminal liability on trustees of “sanctionable trusts”, suspected to be operating unlawfully, who fail to register after receiving a notice from the Registrar, with a fine of up to level 10 and imprisonment of up to six months. The new section 6(9) also departs from established doctrine of common purpose by allowing for joint criminalisation of both a trust and its trustees.
- Section 6(3) also criminalises members of the public for fundraising/crowdfunding without authorisation of the Registrar in terms of the Act, allowing for the imposition of a fine and imprisonment of up to one year.
- CSO activities considered to be “political”, are still criminalised under Clause 9B, new section 23, namely “support[ing] or oppos[ing] any political party or candidate in a presidential, parliamentary or local government election”; violating Part III of the Political Parties (Finance) Act “as a contributor of funds to a political party or candidate or otherwise”; or “wilfully deny[ing] any beneficiary assistance in furtherance of its charitable objects solely on the basis of that beneficiary’s political affiliation, or wilfully makes such assistance conditional upon that beneficiary’s political affiliation”. “Supporting” or “opposing” a political party or candidate remains undefined. A fine of up to level 12 and imprisonment of up to one year may be imposed for this offence.
- The Bill also introduces extensive new provisions for the imposition of civil penalty orders for non-compliance with the Act. PVOs are guilty of “civil default” on such vague grounds as receiving any donation from an “illegitimate” or “immoral” source.
- The Bill also allows the Minister to impose new regulations with penalties for failure to disclose sources of foreign funding, and to impose increased monitoring and supervision measures for private voluntary organisations found to be at “high risk” (presumably of money laundering and terrorism funding abuses).

Of particular concern is the over-penalisation of PVOs and their trustees, managers and employees. Contrary to CSOs’ calls for non-criminalisation for administrative offences, penalty levels have been increased, and new offences introduced. The Bill specifically allows for people to be subjected to multiple civil and criminal penalties for the same administrative offence. There is no uniformity in terms of civil penalties, with some provisions maintaining fines at prescribed levels whilst a “civil default” for the same offence can result in payment of up to USD 9000 despite clear regulations in law that the economy is not dollarised.

**2.6 Violation of fundamental tenets of administrative justice:** The new amendments fail to protect constitutional administrative justice rights.

- The amendments have maintained provisions allowing for the Minister to unilaterally designate organisations as being at “high risk” of money laundering and counter-terrorism

abuses and impose specific measures on them, with appeals to the High Court only allowed on procedural grounds and no rights for the High Court to overturn the decision, only to refer it back to the Minister. The amendments have also maintained the Minister's powers to unilaterally and arbitrarily suspend executive committees of organisations, and impose provisional trustees with extensive powers, with the High Court only reviewing the suspension and appointments after they have been imposed.

- While the amendments have introduced the right to appeal a decision of the Registrar, in relation to applications for registration, deregistration and amendments of certificates, appeals are only to the Minister, not to a court of law, and the Minister has no powers to overturn decisions, only to refer decisions back to the same Registrar for reconsideration.
- It is extremely concerning that the amendments do not provide for specific timeframes of appeals or for suspension of the Registrar or Minister's decisions pending appeals.
- The new Civil Penalty Orders Schedule also provides limited opportunities to challenge orders issued. Those served with an order only have 48 hours to prove to an undesignated officer that the order should not have been made, and after 48 hours *may* be granted a right to a hearing, again before an unspecified designated officer. Undesignated officers are thus given powers to preside and determine reviews and hearings on civil penalties without judicial involvement. The lack of court oversight provisions amounts to a gross violation of rights to administrative justice.

**2.7 Extraterritorial agreements to monitor PVOs in other countries:** Clause 9A of the new amendments will empower the President or a designated Minister to enter into agreements with foreign governments for the purpose of regulating the operations of PVOs. They may enter into agreements for the purpose of obtaining or rendering assistance in the registration of PVOs, the exchange of information about PVOs, the monitoring of the operations of PVOs and investigations into the sources of funding and ownership arrangements of PVOs, and secondment of staff. This amendment enables the executive (President or designated Minister) to exercise extraterritorial powers over PVOs registered in other countries, and to cooperate with foreign nations implementing even more restrictive NGO laws. These powers go well beyond the Financial Action Task Force (FATF) recommendations for international cooperation in the combatting of money laundering and terrorism abuses.

**2.8 Amendment of other Acts relating to Money Laundering:** The proposed amendments also seek to amend the Criminal Matters (Mutual Assistance) Act and the Money Laundering and Proceeds of Crime Act, notably on proliferation financing. It introduces an offence prohibiting the financing of proliferation of weapons of mass destruction, which may result in a fine of up to twenty-five million United States Dollars, and imposes imprisonment for *at least* thirty-five years. The proposed amendments have no specific relevance to the PVO Act, but seem to have been introduced to create an impression that the executive's objective is to strengthen counter-terrorism and anti-money laundering laws in accordance with the FATF recommendations. These amendments should have been introduced through a General Laws Amendment Bill through the relevant Ministry, and been subject to public consultation processes.

### **3. Conclusion and recommendations**

The proposed amendments effectively amount to the introduction of a new Bill. They introduce extensive amendments to the PVO Act and to other pieces of legislation, which have not been subject to public consultation contrary to section 141 of the Constitution. The consultation processes that were conducted previously in relation to the original draft of the Bill appear to have been conducted in bad faith, as CSOs' concerns have been entirely disregarded, with the proposed amendments introducing even greater restrictions to the rights to freedom of association and administrative justice. The proposed Bill will have dire consequences for civic space and access to humanitarian support services in Zimbabwe. Under the circumstances, CSOs call for the withdrawal of the Bill, and for fresh consultations to be held with the public and CSOs on a new draft Bill that will protect citizens' fundamental rights.

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*This analysis has been developed by:*

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