



### Analysis of the PVO Amendment Bill, 2021 and the implications therewith

On Tuesday the 31<sup>st</sup> of August 2021, Cabinet approved the final draft of the PVO Amendment Bill, 2021. The Bill contains proposed changes to the Private Voluntary Organisations Act [Chapter 17:05] ('the principal Act') purportedly necessitated "by growing regional and global concerns about money laundering and the financing of terrorist activities". Consequently, the Bill seeks to develop policies to combat money laundering "by any individual or institution in Zimbabwe operating under the Private Voluntary Organisations banner"; to streamline administrative procedures for private voluntary organisations to allow for efficient regulation and registration as well as to ensure that private voluntary organisations do not undertake political lobbying. What follows is an analysis of the proposed amendments to assess their bearing on the operational efficacy and independence of CSOs in Zimbabwe's Second Republic.

Section	Summary of Proposed changes	Comments and implications
2	This section provides for the inclusion, immediately after the definition of "contributor" in the principal Act, of the definition of "funds and other assets" - which is very wide ranging to include all financial assets and funds or other assets of every kind.	From a humanitarian perspective this provision has the potential of having far-reaching negative consequences as it could deter donors from funding PVOs in the fear that such funds could end up under the tight grip of the government. Such an outcome would serve to constrict PVOs in effectively discharging their mandates in the promotion of good governance, alleviation of poverty, reduction of socio-economic gaps in the country as well as the upholding, promotion and protection of basic human rights and freedoms enshrined in the country's constitution. Ultimately, what this would translate to for the ordinary Zimbabwean, is continued suffering through the driving away of resources/civilian foreign aid intended for development initiatives.
	This section provides for the definition of "private voluntary organisation" to include any legal person; any legal arrangement in addition to any body or association of persons, corporate	The broadening of the definition of "private voluntary organisation" as proposed in this instance has a <i>prima facie</i> connotation of harmlessness. However, widening of the definition

	or unincorporate, or any institution as expressed in the principal Act	could result, ironically, in narrowing of the democratic space in Zimbabwe as hesitancy to register as a PVO, in light of the more stringent provisions espoused under the Bill, could arise to avoid unwarranted governmental scrutiny. The expanded definition could result in the required registration of trusts and common law <i>universitas</i> which have been exempt from registration.
	The Minister may, through regulations, designate any PVO by name, class, type or characteristics, which he/she deems to be at high risk of or vulnerable to misuse for purposes of funding terrorism, terrorist organizations or terrorist causes.	This provision places unfettered powers on the part of the Minister who can, through exercise of his/her subjective discretion, place what he/she deems to be high risk PVOs under strict monitoring and surveillance. This has the adverse effect of encroaching upon the day-to-day activities of CSOs. It provides room for PVOs to eat out of the current administration's hands for their operations to go unimpeded and thus severely undermines the independence of CSOs in the country.
3	In terms of this section, the Bill seeks to establish an office of the Registrar of PVOs to regulate their operations.	This alters the current position where: PVOs are registered in terms of the PVO Act in the Department of Social Welfare. Under the PVO Act, PVOs fall under the purview of the director of Social Welfare in the Ministry of Public Service, Labour and Social Welfare. In contrast, Section 3 of the Bill which amends section 5 of the principal Act stipulates that it is the Registrar's prerogative to "enter all such particulars in relation to the registration of private voluntary organizations and their constitutions". The establishment of the Registrar's office to regulate PVOs serves to further tighten the hangman's noose on NGO and CSO operations as the Registrar is accorded powers to penalise "non-compliant organisations" through the imposition of civil penalty orders on defaulting PVOs.
5	This provision purports to amend section 10 of the principal Act which in its current form deals	From a textual or face value interpretation, it can be asserted that this

	<p>with the cancellation of registration certificates. The proposed amendment provides that: “when any private voluntary organisation <b><i>that supports or opposes any political party or candidate in a presidential, parliamentary or local government election</i></b> or is a party to any breach of section 7 under Part III of the Political Parties (Finance) Act [Chapter 2:12] as a contributor of funds to a political party or candidate or otherwise shall be guilty of an offence and liable to a fine of level twelve or to imprisonment for a period not exceeding one year, or both such fine or such imprisonment” (emphasis added).</p>	<p>proposed amendment to the principal Act is aimed, ostensibly, at ensuring that PVOs remain non-partisan in the discharge of their functions and/or mandates. This belies the political landscape in which CSOs presently exist and operate. It is in this context that the intention of this provision unravels. Firstly, this can be viewed as a ploy to forcibly align CSOs with the ruling party’s political agenda in the run up to the 2023 polls. The majority of the mostly foreign funded NGOs and CSOs in the country provide relief aid and social welfare services to indigent members of Zimbabwe’s society which is in sharp contrast with the government’s politicization of food and other relief programmes for the benefit of supporters of the ruling party. It is in this light that the strong desire on the part of the current administration to enact restrictive legislative provisions that seek to micro-manage CSO operations becomes apparent. But secondly, the intention is to stop NGOs from rendering assistance to victims of organised violence and torture in the form of either legal support, medical support or emergency support.</p>
6	<p>Inserts, immediately after section 13 of the principal Act; section 13A which sets out provisions regarding registration and amendment of registration required in certain instances. Under subsections (2) and (3) respectively, the requirements, inter alia, are that: where material changes to a PVOs original application have occurred, the PVO must</p> <ul style="list-style-type: none"> <li>(a) apply to the registrar to amend the PVOs particulars of registration;</li> <li>(b) submit an amendment application no later than 1 month after the amendment occurred, which application can then</li> <li>(c) either be approved or</li> </ul>	<p>Proposed changes under this section seek to deal with material changes to a PVOs original application for registration whereupon the PVO concerned would have to undergo a re-registration process as stipulated under the provisions of this section. While the provisions seem not heavy-handed, they do, however, entail a tedious process. While these provisions do not bar any person, body or entity seeking to branch into civic society, it certainly does put in place draconian measures that constitute bureaucratic red tape aimed at making further in-roads into the operations of PVOs in the</p>

	(d), rejected in which case the Registrar can order the reversal of the material change that prompted the application in the first place or (e) the amendment application can be rejected in which case the applicant would have to reregister or start the entire process afresh.	country. In any case, the idea is to give the Registrar the latitude to de-register or refuse permission to amend in the process close those deemed to be undesirable.
8	Deals, essentially, with risk assessment in relation to PVOs and other institutions.	This section envisions the use of the Financial Action Task Force in the combatting of money laundering and terrorist financing policies. No mention is made of the definition of what a terrorist financing offence or terrorist act for example would constitute for the purposes of this section. In the result, it creates confusion rather than clarity thereby opening the provision to wanton abuse due to the definition gaps contained therewith. In reality, NGOs in Zimbabwe have not been shown to be used in terrorist activities and this provision can be viewed as snopping on the NGOs.
		The above are in addition to the Minister's powers under section 7 of the Bill to suspend the executive committee of a PVO for maladministration and failure to discharge the declared mandate as specified in its constitution; where the organization is involved in any illegal activities; or it is necessary or desirable to do so in the public interest. The Bill is ominously silent on what would constitute illegal activities neither does it specify the grounds that would justify the suspension being in the public interest. This, once again, places wide discretionary powers upon the Minister.

Essentially, therefore the proposed changes to the PVO Act as contained in the PVO Amendment Bill, 2021 encroach severely upon the independence and operational efficacy of CSOs in the country. There are currently over 1 000 NGOs operating in Zimbabwe in different focus areas that are inclusive of, but not limited to, the provision of humanitarian aid; social welfare services as well as in areas of good governance. In essence, their work goes a long way in filling in where the government is falling short.

Continued hostility and harassment on the part of the government towards the work of CSOs in the country will thus only result in a hugely detrimental effect on their efforts in advancing the protection of and respect for the basic human rights and freedoms of ordinary Zimbabwean civilians as espoused under Zimbabwe's Constitution Amendment No. 20 of 2013.