



**The proposed
PVO Amendment Bill
in Zimbabwe: A Significant Threat to Civic Space**

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INTRODUCTION

When many people get involved in socio-economic and political matters that affect them, many common problems affecting humanity can be easily solved. Without broad-based people involvement in social, economic, civil and political affairs that affect them, there cannot be accountable governance. Without accountable governance, conditions that allow for impunity and for abuse of power, corruption and patronage exist. Society cannot prosper. It is therefore critical that large sections of society remain interested and engaged in civic, political and economic affairs of their society if public officials are to be made accountable. Pro-democracy activists, human rights defenders (HRDs), land, environment and indigenous defenders need an open civic space if they are to effectively protect the rights of others. In an environment of closure or constriction of civic space, not only do threats against HRDs, civil society and NGOs increase, but their effectiveness is severely compromised. Sustained constricting of civic space takes away the benefits of and ultimately kills democratic development.

Southern Defenders has been concerned at the democratic regression and authoritarian consolidation in Zimbabwe. Civic space both online and offline is shrinking as it is shifting. The removal of long-term dictator president Robert Mugabe in a popular coup in November 2017 gave the people of Zimbabwe hope that at last democracy would flourish in Zimbabwe. Part of the evidence of this new hope in democracy was exemplified by the increased number of voters, political parties, and presidential candidates.

The first post-Mugabe election turnout was 75%. However, since then the ground has rapidly changed starting with the deployment of soldiers to kill unarmed civilians with impunity on 1 August 2018. Significant human rights violations and attacks on civic space have been reported. Southern Defenders is therefore monitoring the developments around civic space in Zimbabwe and documenting these with a view to contributing to the defence and protection of civic space as the oxygen and water needed to sustain human rights defending as well as effective participation by people of Zimbabwe in matters that affect them.

Southern Defenders accepts the definition by of Bossuyt, J. and Ronceray, M. (2020) that defines civic space is as the public arena in which citizens can freely intervene and organise themselves with a view to defending their interests, values, and identities; to claim their rights; to influence public policy making or calling power holders to account. Southern Defenders has noted that the Zimbabwe Cabinet has approved a PVO Amendment Bill which has now been gazetted as a step towards promulgation into law.

Southern Defenders has done a rapid analysis of the proposed PVO Amendment Bill to assess and evaluate whether these proposed law would constrict or expand civic space, enhance or stifle the vital independent workings of Civil Society in the country and whether it complies with the letter and spirit of the Zimbabwe constitution including Chapter 2 (8) (1) of the Constitution whose purpose is to "guide the State and all institutions and agencies of government at every level in formulating and implementing laws and policy decisions that will lead to the establishment, enhancement and promotion of a sustainable, just, free and democratic society in which people enjoy prosperous, happy and fulfilling lives".

The Private Voluntary Organisations (Amendment) Bill, 2021

The Government of Zimbabwe has now gazetted the Private Voluntary Organisations (Amendment) Bill, 2021.

The Bill which was approved by the Zimbabwe Cabinet in August/September 2021 is cited as the Private Voluntary Organisations (Amendment) Bill, 2021.

Purpose and context of the new PVO Amendment Bill.

The GoZ has given two reasons why it felt compelled to propose such a Bill for promulgation into law by Parliament, namely requirements to comply with the Financial Action Task Force (FATF) recommendations and the need to prohibit NGOs from involvement in politics

Compliance with Financial Action Task Force (FATF) recommendations

The Bill amends the Private Voluntary Organisations Act [Chapter 17:05]. The amendments were made ostensibly to comply with the Financial Action Task Force (FATF) recommendations made to Zimbabwe in order to develop policies to combat money laundering seeing that Zimbabwe is a member. More specifically, the PVO Amendment Bill seeks to comply with FATF recommendations under technical compliance raised under Zimbabwe's Mutual Evaluation Report which saw Zimbabwe placed under a monitoring programme in October 2018 by the FATF in order to ensure that the country aligns its laws on private voluntary organisations to recommendation 8 which provides that private voluntary organisations can be abused by money launderers and terrorist financiers and that as such, there is need to have clear laws that set out a framework to prevent any potential abuse in key sectors. The memorandum also states that the provisions in the PVO Amendment Bill have been added as a way to ensure that private voluntary organisations do not undertake political lobbying.

Prohibition of political involvement

The Bill also prohibits PVOs from political involvement or from undertaking any political lobbying whatsoever on behalf of any individual, organisation or political party and it will impose penalties for those PVOs that violate the Act in the form of a fine of level twelve or to imprisonment for a period not exceeding one year, or both such fine and such imprisonment

New definition of private voluntary organization

The Bill Amends the definition of "private voluntary organisation" with a much wider definition which encompasses some categories of organizations that the current PVO Act is not applicable to such as trusts and universitas. This means that these organizations will now be subject to re-registration and to broad control and regulation by the board and the Minister.

Registration

Under the amendment Bill, registration of an organization will no longer be free and there are harsh penalties for non-compliance with the new Bill reading that a designated institution that fails to register as a private voluntary organization shall be guilty of an offence and liable to a fine not exceeding level fourteen and each of the members of the governing body of that organization or institution shall be liable to the same offence and penalty and additionally or alternatively to the fine, shall be liable to imprisonment for a period not exceeding ten years.

Risk assessment

Under the PVO Amendment Bill, private voluntary organizations will be subject to a risk assessment at intervals of not less than once in five years. The Minister shall require, on the basis of such a risk assessment, or in the case of an institution requiring to be registered as a private voluntary organization, the organization or the institution to undertake specified measures to mitigate the identified risk or vulnerability within a specified time. The Minister may prescribe such special measures and requirements as being applicable to the designated private voluntary organizations for the purpose of eliminating or minimising the risk of abuse.

Powers of the Minister Additional or special requirements

The Bill gives the Minister authority that he may, through regulations, designate by name, type, class, or characteristics, require any legal person, legal arrangement, body or association of persons, or institution, which the Minister deems to be at high risk of or vulnerable to misuse for purposes of funding terrorism, terrorist organizations or terrorist causes, require such legal person, legal arrangement, body or association of persons, or institution to register as a private voluntary organization in terms of this Act; and may prescribe such additional or special requirements, obligations or measures, not inconsistent with this Act, that shall apply in respect of such legal person, legal arrangement, body or association of persons, or institution, in order to mitigate against such risk or vulnerability.

The concern from a civic society point of view is that such 'additional' or 'special' requirements may be used to stifle the operations of some NGOs and that they are seemingly retroactively applicable.

Suspension of executive committee of an NGO

The Bill allows the Minister to make application to the High Court to appoint one or more persons as trustees to run the affairs of an organization for a period not exceeding sixty days pending the election of members of a new executive committee in instances where all or some of the members of the executive committee of a registered private voluntary organization have been barred from exercising all or any of their functions in running the affairs of the organization. Such a scenario is envisioned where the organisation has ceased to operate in furtherance of the objects specified in its constitution; or the maladministration of the organization is adversely affecting the activities of the organization; or the organization is involved in any illegal activities; or it is necessary or desirable to do so in the public interest. The Bill also allows the Minister to appoint one or more provisional trustees who shall exercise all the powers of the substantive trustee until the provisional trustee's appointment is confirmed by the High Court or some other person is appointed with the leave of the Court as a substantive trustee and If the High Court refuses an application to appoint or

Suspension of executive committee of an NGO

confirm the appointment of one or more trustees, the refusal of the application shall not affect the validity of anything done by the provisional trustee in good faith pursuant to this section before the date of such refusal.

The trustee shall exercise all the functions of the executive committee of the organization and any provisional or final trustee who is not in full time employment of the State, shall be entitled to be paid from the funds of the organization, for so long as he or she holds office as such, a monthly salary at such rate as the Minister may determine. Any person who makes any false representation to, or otherwise wilfully hinders or obstructs a trustee in the exercise of his or her functions; or falsely holds himself or herself out to be a trustee; or shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

The concern here is that provisional trustees can be mis-used to disrupt or infiltrate organisations that the state dislikes to gain access to information and stifle operations such that by the time the court makes its decision whether or not to appoint a trustee, the information or outcome sought has already been achieved

Power of Registrar to issue civil penalty orders

Where default is made in complying with any provision of the Amendment Bill or of regulations or orders made for which a civil penalty is specified in the Bill, the Registrar may serve upon the defaulter a civil penalty order. It is important to note that every officer of a corporate defaulter mentioned in the civil penalty order by name or by office, is deemed to be in default and any one of them can, on the basis of joint and several liability, be made by the designated officer to pay the civil penalty in the event that the defaulter does not pay.

Upon the expiry of the ninety-day period within which any civil penalty order of any category must be paid or complied with, the defaulter shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).

Analysis of the PVO Amendment Bill from a Human Rights lens

Such civil penalties are likely to be applied selectively by the registrar to target disliked NGOs in order to frustrate their work and target their officers. This results in potential criminalisation of NGO work.

The concern here is that the provision in the proposed Amendment Bill of prohibition from “political involvement” for PVOs is overly broad and vague to have a potential of being misused to target for persecution CSO leaders, pro-democracy activists, human rights defenders and NGOs that may be involved in promoting and protecting civil and political rights that are protected under the Zimbabwean constitution and major international instruments that Zimbabwe has signed and ratified such as the African Charter on Human and Peoples Rights, and the International Covenant on Civil and Political Rights. Civil and political rights are also enshrined in the Universal Declaration of Human Rights and constitute a core objective of the establishment of the African Union in terms of the AU Constitutive Act. The Vienna Convention also settled the issue that all human rights are universal, inherent, interrelated, interdependent and mutually reinforcing. This means that it is difficult to enforce and protect economic, social and cultural rights without effective enforcement and protection of civil and political rights. The thrust of preventing NGOs and human rights defenders from enforcing and protecting civil and political rights proposed in the amendment bill poses a threat of incalculable proportion to enjoyment of all rights civil and political, as well as social, economic, cultural and environmental in Zimbabwe.

The PVO Amendment Bill poses a significant risk to civic space in Zimbabwe. It gives too much power to the Executive to control and interfere with the work of NGOs. It increases the surveillance and monitoring of NGOs and HRDs. It potentially criminalises NGO work and human rights defending. It creates potential arbitrariness in the application of the law. It creates real dangers of expropriation of NGOs funds and assets without due process and compensation. It might also be used to disrupt the work in support of democracy, governance, human rights and the rule of law. Chapter 4 Part 5 of the Constitution provides that fundamental rights and

freedoms set out in the constitution of Zimbabwe may be limited only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom. The PVO Amendment Bill is therefore far from being consistent with the letter and spirit of the Constitution of Zimbabwe of 2013 that it must comply with.

The over broadness and vagueness in the phrase "political involvement" is a breach of the principle of legality in law making, in that it makes it difficult if not impossible for CSO leaders, human rights defenders, NGOs and pro-democracy activists to know how to regulate their behaviour to avoid falling foul with the law. Worded this way the proposed amendment bill potentially criminalises civil society activism, human rights defending and creates a minefield for NGOs. The principle of legality requires that the law is clearly articulated and known in advance and not applied retroactively. Once this proposed amendment is promulgated it is likely to be applied to proscribe work that civil society leaders, human rights defenders, pro-democracy activists and NGOs have done legally for years without an issue, which breaches the principle against retroactivity in application of the law. At the interpretation level, the phrase "political involvement" is open to abuse and arbitrariness on the part of the Minister and authorities with the power to enforce the Act, and interpret the behaviour of human rights defenders, democracy activists and NGOs. The proposed law as worded is therefore likely to be abused to violate human rights and undermine the enjoyment of fundamental rights and freedoms in Zimbabwe. In practice the law will amount to a claw back clause on enjoyment of fundamental rights guaranteed in the constitution of Zimbabwe in a way that is not reasonably necessary in a democratic society.

Is the general NGO Legislative Framework adequate or in need of reform?

The current 3 distinct legal regimes under which NGOs come into existence in Zimbabwe namely, as a Private Voluntary Association under the Private Voluntary Organisations (PVO) Act [Chapter 17:05], or as a Trust in terms of a trust deed registered under the Deeds Registries Act [Chapter 20:05] or as Universitas under common law usually done in terms of a members constitution as a voluntary association have stood the test of time and served the country very well. Currently the country has a reasonable number of NGOs working in different sectors ranging from human rights groups, development organisations, humanitarian organisations, environment protection organisations, social movements or mass based movements such as churches, labour and students movements. There is really no gap in legislation in terms of how these entities can legally exist and operate. All critical stakeholders, government, donors, target groups and beneficiaries are capable of understanding this legal framework that they have used for decades. The country has no problem of terrorism. There is also no history that the NGOs in Zimbabwe have been involved in any way in money laundering or financing of terrorism in a way that warrants significant concern to overhaul the legal registration and operating framework. In other words, there is nothing broken in order to fix.

Does current legislation meet the FATF standards and recommendations?

The objective of Recommendation 8 “is to ensure that NPOs are not misused by terrorist organisations to pose as legitimate entities; to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes”. It is important to note that the interpretive note to recommendation 8, in its objectives and general principles, states that measures adopted by countries to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities. The interpretive note also states that “such measures should promote transparency and engender greater confidence in the sector, across the donor community and with the general public, that charitable funds and services reach intended legitimate beneficiaries”. The current NGO legislation coupled with the existing regime of criminal and banking laws seem to be adequate to deal with any possible cases of money laundering and

financing of terrorism that there is no need to overhaul the NGO legislative framework as proposed by the government of Zimbabwe. The provisions of the PVO Act appear to put the State in a strong position to monitor and access any information regarding PVOs in the country without the need for additional intrusive legislation.

Further the GoZ has also not yet done a proper National Risk Assessment for money laundering and financing of terrorism in order to appreciate the threats factors and any legislative gaps needing law reform. This is not unique to Zimbabwe alone but is the case with most countries in East and Southern Africa. It is instructive that the Reserve Bank of Zimbabwe issued a Press Statement 29 September 2021 about the phenomenon of money laundering in Zimbabwe giving a list of the most notorious people and entities on money laundering. The operative portion of the notice read as follows:

“The Financial Intelligence Unit (FIU) has identified individuals listed hereunder who are abusing mobile telecommunications services and other social media platforms to promote and facilitate illegal foreign exchange transactions and money laundering activities. The FIU has instructed banks, mobile money operators and other financial service providers to identify and freeze any accounts operated by these individuals and, further, to bar them from accessing financial services for a period of two years, with immediate effect.”

Interestingly, no single NGO or civil society activists is on this list of money launderers and yet the government is scrambling legislation to overhaul the NGO legislative framework under the guise of trying to combat money laundering and financing of terrorism. Further the fact that the FIU can instruct banks in Zimbabwe that individuals and entities involved in alleged money laundering need to be banned from banking “for a period of two years with immediate effect” means that the government already has enough powers to combat money laundering without the need to create additional legislation targeting NGOs.

The proposed PVO Amendment Bill seems therefore to be for sinister purposes and will pose a significant threat to civic space and be used to persecute targets. It must therefore be resisted with all means necessary.

RECOMMENDATIONS

1. The Government of Zimbabwe (GoZ) is encouraged to withdraw the PVO Amendment Bill and initiate an extensive consultation process with civil society as outlined in Chapter 14 of the Constitution if it wishes to change the legal framework through which NGOs come into existence in Zimbabwe
2. The GoZ is encouraged not to pass any new law governing the legal framework through which NGOs come into existence in Zimbabwe and apply it retrospectively to affect the rights of civil society groups and NGOs that already legally and validly exist in terms of the current laws of the land.
3. Any proposed new legislation governing the registration and operations of NGOs must exempt organisations that are already registered under existing valid legal regimes from re-registering.
4. The GoZ is particularly requested to note that the Constitution of Zimbabwe is the supreme law of Zimbabwe and any proposed law, practice, custom or conduct needs to be consistent with the Constitution. In particular the GoZ's attention is drawn to the fact that the Supremacy clause of the constitution is binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and is required to be fulfilled by them. Any proposed NGO law must therefore not constrict civic space or impede enjoyment of fundamental rights and freedoms enshrined in the constitution.
5. Any proposed NGO law must move towards the self-regulation of the NGOs and therefore any NGO Board which is established must have the majority membership elected by the NGOs themselves.
6. Any proposed NGO law must not amount to criminalising the work of NGOs or HRDs and the GoZ is discouraged from imposing harsh penalties including jail-time of up to 10 years for NGO Registration framework related perceived offences. .

7. Whilst upholding the FATF recommendations may be prudent, the implementation of FATF recommendations should be executed in a manner that takes into account FATF recommendation 8, which states that “as a matter of principle, complying with FATF Recommendations should not contravene a country’s obligations under the Charter of the United Nations and international human rights law to promote universal respect for, and observance of fundamental human rights and freedoms, such as freedom of expression, religion or belief and freedom of peaceful assembly and of association”

8. The GoZ is encouraged to look to fulfil the FATF recommendations by utilising the current NGO legislation such as Section 9 (4) and section 20 (1) (a) of the PVO Act which already enables the government to access information for such purposes. In other words, no new law is needed to comply with FATF requirements but merely more rigorous implementation of the existing laws including existing legislation on financial intelligence to combat money laundering and financing of terrorism as well as existing criminal laws of the land.

9. The GoZ needs to carry out and conclude a proper National Risk Assessment for money laundering and financing of terrorism before changing NGO legislation and until this is done, the GoZ cannot formulate and implement risk-based national AML/CTF strategies targeting NGOs and civil society organizations.

10. The GoZ is encouraged to comply with Chapter 11 of the Constitution which stipulates that any proposed legislation meant to address security risks for example the use of NGOs for money laundering or facilitation of terrorist activities in the country must be pursued with utmost respect for the fundamental rights and freedoms and the democratic values and principles enshrined in the Constitution and this should be kept in mind and adhered to in any proposed legislation.

11. As changing the legal framework through which NGOs register and operate has a big impact on ordinary people

as the ultimate beneficiaries of the NGOs work, the GoZ (including PDCs) is encouraged to genuinely engage with the people as required in terms of Chapter 14 when making decisions that affect them before putting into operation any significant policy or administrative directives that negatively affect civic space, effective participation and engagement of communities and the work of HRDs.

12. Civil society in Zimbabwe must come together to reflect on these new threats to civic space and HRDs in Zimbabwe and collectively engage the GoZ, the regional and international community with a view to coming up with an agreement on the way forward.

13. Civil society in Zimbabwe via NANGO is advised to withdraw their proposal in the form of the NANGO Shadow Bill as it plays into the hands of an autocratic approach to regulating the NGO sector and allows the FATF recommendations to be used as a pretext to clamp down and criminalise Civil society, the NGO sector and HRDs

14. Civil society and HRDs are encouraged to be guided by the constitution of Zimbabwe 2013 as well as the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on HRDS

About



Southern Defenders embodies an ironclad commitment to protecting human rights defenders (HRDs) in the face of attacks and shrinking online and offline civic space. It coordinates regional efforts to provide rapid, practical, holistic and inclusive protection support to HRDs at high risk, defend civic space, and empower HRDs to mitigate the effects of repression. To this end, the Southern Defenders contributes to the respect and recognition of HRDs as legitimate actors and agents of social change with universally recognized and constitutionally guaranteed rights.

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