

## KEY AMENDMENTS IN THE PVO AMENDMENT BILL – A SUMMARY – November 2021

### What is the Private Voluntary Organizations (PVO) Amendment Bill?

The Clerk of Parliament gazetted<sup>1</sup> the Private Voluntary Organizations Amendment Bill, H.B. 10, 2001, on November 5, 2021. The bill seeks to amend the **Private Voluntary Organizations Act [Ch 17:05]**.<sup>2</sup>

### What are private voluntary organizations (PVOs)?

PVOs are public-benefit *bodies or associations of persons or institutions* that carry out humanitarian and charity work, provide legal aid, or promote the welfare of animals.

### Which organizations are currently not considered as PVOs under the PVO Act?

State-controlled institutions or services, local authorities, religious bodies, trusts (registered by the High Court or otherwise), any association or body created to benefit its own members, any health institution registered under the Health Professions Act, any approved body or association that provides medical services, political organizations, the Zimbabwe Red Cross, and other bodies as may be prescribed.

### What reasons are provided in the Bill for amending the Private Voluntary Organizations Act [Ch 17:05]<sup>3</sup>

- (i) To comply with recommendations made to Zimbabwe<sup>4</sup> by the Financial Action Taskforce<sup>5</sup>;
- (ii) To streamline administrative procedures for PVOs to optimize regulation and registration;
- (iii) To put in place provisions to ensure that PVOs do not participate in political lobbying.

### How does the Bill achieve the proposed amendments?

#### KEY PROPOSED AMENDMENTS

##### 1. The Bill widens the definition of a PVO - Clause 2

- If passed, a PVO will include any 'legal person'<sup>6</sup> or any 'legal arrangement'<sup>7</sup> whose objectives are to carry out humanitarian and charity work, provide for legal aid, or promote the welfare of animals.
- Examples of legal persons are clubs, charities, partnerships, associations, business corporations, trusts, clubs, charities, and sole traders, etc.

##### 2. The Bill alters entities that are not PVOs - Clause 2

- The Bill removes the exemption provided to trusts allowing them to register as PVOs if they were registered with the High Court of Zimbabwe.

##### 3. The Minister may declare any legal person, legal arrangement, body, association of persons or institution as high risk or vulnerable to being misused by terrorist organizations - Clause 2

#### REGRESSIVE

- *The Minister is not required to carry out a risk assessment, to give notice to the entities, or to provide the entities with a right to be heard.*
- *The proposed powers of the Minister go beyond what is already provided in the Act.*
- *There are no checks and balances on the Minister's powers.*

<sup>1</sup> Gazetting is the official publishing of a proposed law or other information by the state. This is done in the Government Gazette.

<sup>2</sup> This law provides for (i) the registration of private voluntary organizations (PVOs), and (ii) the control and collection of contributions of PVOs and other institutions.

<sup>3</sup> The reasons behind the proposed amendments are outlined in the Memorandum of the PVO Amendment Bill.

<sup>4</sup> <https://www.fatf-gafi.org/countries/#Zimbabwe> Zimbabwe was placed under a monitoring program in October 2018 by the FATF in order to ensure that the country aligns its laws on private voluntary organizations to recommendation 8. Recommendation 8

seeks to address the risk of private voluntary organizations being abused by money launderers and terrorist financiers.

<sup>5</sup> The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. <https://www.fatf-gafi.org/>

<sup>6</sup> A legal person is created by the law. It can do things that a human being can do in terms of the law, and it has rights and duties.

<sup>7</sup> Legal arrangements do not have separate legal personality. They form business relationships through their trustees.

- This undermines the rights to administrative justice and freedom of association.
4. The Bill may require an organization to re-register as a PVO under the PVO Act if it is designated as high-risk - **Clause 2**

#### REGRESSIVE

- New laws should not require organizations to re-register if they already have.
5. The Minister has power to prescribe additional or special requirements to mitigate risk – **Clause 2**

#### REGRESSIVE

- The ‘additional’ or ‘special’ requirements are neither defined, nor need they be consistent with the PVO Act.
  - There are no checks and balances on this power, which creates room for arbitrariness.
6. The Bill restricts HOW trusts that are registered in the High Court can raise funds, and requires double registration - **Clause 2**
- If the Registrar of PVOs suspects that a trust is collecting funds from the public or outside of the country, the trust will be required to register as a PVO within 30 days.
  - Any person that fails to comply with these requirements shall either be guilty of a Level 5 offence or be imprisoned for 6 months at most.
  - Trusts that receive this notice have a right to make written objections to the Registrar.

#### REGRESSIVE

- The right to freedom of association of organizations under international law includes the ability to seek, receive and use resources from domestic, foreign, and international sources.
- It is also provided for in S58 of the Constitution. “Freedom of assembly and association.” Any limitations should be in line with S86 of the Constitution, “Limitations of Rights and Freedoms”.
- New laws should not require organizations to re-register.

7. The Bill introduces a registration fee for entities that apply for registration as PVOs - **Clause 4**

8. The Bill prohibits PVOs from supporting or opposing any political party or candidate in a presidential, parliamentary, or local government election - **Clause 5**

- A PVO that does so violates S7 of the Political Parties (Finance) Act [Ch 2:12].
- PVOs that are found guilty of this must pay a Level 12 fine, or face imprisonment for a period not exceeding one year, or both.

#### REGRESSIVE

- The suggested prohibition’s ambiguity potentially violates the right to freedom of association.
- CSOs and PVOs have the right to freely participate in activities related to electoral processes **A,68/299 (2013), Section B, and Section 67 of Constitution.**
- Rights may only be limited 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. **Section 86(2) of Constitution.**

9. The Bill requires PVO’s to re-register or amend their registration with the Registrar where there is a material change.

- A material change represents a change in constitution of PVO, ownership or control of the PVO, or a variation in the capacity of the PVO to operate as a PVO - **Clause 6**
- The Registrar may approve or reject an application, depending on whether the application is in line with the key requirements of the Act’ - **Clause 6**

#### REGRESSIVE

- Organizations should not be required to register more than once, per the **ACPHR Guidelines on Freedom of Association and Assembly, para 17.**
- The suggested requirement to re-register potentially interferes with the freedom of association by creating an opportunity to take away an organization’s legal status.

10. The Bill allows a certificate of registration to be transferred to another PVO or to another person - **Clause 6**

#### POTENTIALLY PROGRESSIVE BUT VAGUE

**11. The Bill allows the Minister to either suspend the Executive Committee or appoint one or more trustees to run affairs of a PVO for not more than 60 days if:**

- The organization is not operating in line with its constitutional objectives, the organization's activities are adversely affected by maladministration, the organization is involved in illegal activities, or it is necessary or desirable in the public interest - **Clause 7**
- An appointed trustee cannot acquire or dispose of the organization's funds or assets - **Clause 7**
- If Minister's suspension is not lifted within 30 days, the office of the suspended member shall become vacant - **Clause 7**

**REGRESSIVE**

- *The Minister can replace Executive Committee without court oversight.*
- *Interference with internal governance of PVOs restricts freedom of association.*
- *A similar provision was struck down by the Supreme Court in 1997 for inconsistency with S 18(9) of Lancaster House Constitution in *Holland & Ors v Minister of Public Service, Labor and Social Welfare 1997 (1) ZLR 186.**

**12. An office bearer or employee that misappropriates the organization's funds or assets may be ordered to refund or return these to the organization - Clause 7**

- An appointed trustee may make an application to the High Court to order the return of misappropriated funds or assets of an organization.

**POTENTIALLY PROGRESSIVE**

- *Further details required.*

**13. The Bill gives the Minister power to undertake a risk assessment of all PVOs and organizations to assess risk of them being misused by terrorist organizations every 5 years without their involvement.**

- The risk assessment criteria will be drafted by the Financial Action Task Force.
- The risk assessment will be conducted in coordination with the Financial Intelligence Unit.

**REGRESSIVE**

- *Minister is not required to engage PVOs in the risk assessment process.*

- *FATF requires countries to work with NPOs during risk assessments according to the **FAT International Standards on Combating Money Laundering and the Financing Terrorism & Proliferation, p54.***

**14. The Bill gives the Minister power to require a risky institution to register as a PVO; OR to carry out specific measures to mitigate risk - Clause 8**

- Failure to register as a PVO will incur a Level 14 fine.
- An organization that is designated as high risk has the right to 'appeal' to the Minister in writing within 14 days. The Minister may accept or reject the 'appeal'.

**REGRESSIVE**

- *The requirement to re-register potentially interferes with the freedom of association by presenting an opportunity to take away an organization's legal status.*
- *What specific measures the Minister will put in place are not specified, creating room for arbitrariness.*

**15. The Minister may give the Registrar powers to monitor and enforce compliance with the Act - Clause 8**

- The Registrar's powers include the abilities to revoke licenses and to order the removal of a director, trustee or employee.
- The Financial Intelligence Unit has powers to receive or access information held by the PVO.

**REGRESSIVE**

- *The proposed monitoring and enforcement powers are excessive and violate key International Principles on organizations' freedom of association.*

**16. The Registrar may issue civil penalty orders - Clause 11**

- Every person mentioned in the civil penalty order is deemed to be in default.
- Defaulters shall be guilty of fine not exceeding a Level 6 offence, or to imprisonment for at least one year or both after 90 days if the defaulter fails to pay the fines.

**REGRESSIVE**

- *The proposed civil penalty orders are excessive and disproportionate. Compliance should be the first option.*
- *The PVO must prove that it has not violated the PVO Act.*
- *International best practices on burden of proof provide that the one who alleges should prove the allegation.*