

SUBMISSION

by the Social Enterprise Consortium

in the context of the PVO Bill

1. Women of Zimbabwe Arise (WOZA)
2. Lupane Womens Development Trust (LWDT)
3. Phathisani Community Based Organisation
4. Trinity Project (TP)
5. Maranatha Orphans Care Trust (MOCT)
6. Dinah Falala and Phoebe Sandi Foundation (DP Foundation)
7. Sakhisizwe E & S Development
8. Sibanye Animal Welfare and Conservancy Trust
9. #Whispers
10. Renewable Energy for Sustainable Development (RESD) Trust
11. Lupane Youth for Development Trust (LYDT)
12. Tikobane Trust
13. Inkhanyezi Development Trust (IDT)
14. Nurture Imvelo Trust
15. Limpopo Basin Development Trust (LIBADE)

TO THE PARLIAMENT OF ZIMBABWE

Entitled

NO SURRENDER - HANDS DOWN AND BACK TO OUR ROOTS!

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Executive summary

Zimbabwe is implementing the National Development Strategy (NDS) 1 and the National Vision “Towards an upper middle economy by 2030”. To achieve this, a multi stakeholder approach involving urban and rural folk as human capital is vitally important. To achieve this Government must embark on economic empowerment initiatives in both urban and rural areas. A key facet to this is to directly empower previously marginalized population groups in the mainstream economy and to correct imbalances in resource ownerships. As Zimbabwe inherited a dual economy at Independence, this structurally constructed discriminatory approach kept poverty in place on basis of race, tribe and class. Only selected elite group were permitted access to economic growth and development. The 2030 Vision must address this if it can succeed and according to the World Bank Government provides less than US\$100 million per year for social support programmes that includes health, education, water and sanitation. This contribution must dramatically increase for a middle income economy to be realised.

To succeed the NDS Strategy must have highly activated implementation strategies starting with rural levels. In Zimbabwe the rural population is estimated at about 70% practicing subsistence farming (Zimbabwe National Statistics Agency, 2015). They live in resource rich areas in very simple conditions that can be described as abject poverty conditions. The opportunities to exploit natural resources, vast minerals, wildlife and forestry fall to outsiders who extract this wealth often with employees from outside the local area. Zimbabwe’s Economic Empowerment Policy therefore, ought to include all Zimbabweans at their local level, into the mainstream economy. The NDS 1 should focus also on provision of appropriate infrastructure such as schools, roads, clinics, dams, rural green power systems, irrigation schemes and equity holding in businesses exploiting natural resources throughout the country. Often the development of Dams, work of extractive industry, commercial agriculture and energy sector does not respect, protect and fulfil the rights of host communities to be part of their own development.

According to a recent report related to the passing of the Private Voluntary Organisations (PVO) Amendment Bill, “World Bank estimates, NGOs contributed about US\$800 million towards social protection while the government only contributed US\$90 million. For instance, according to the 2022 national budget statement, during the period January to September 2021, the country received development assistance amounting to US\$647.8 million, of which US\$401.9 million was from bilateral partners and US\$245.9 million from multilateral partners. NGOs have contributed significantly towards addressing the financing needs/gaps. Donor financing far outstrips government financing in all health, education, food security, and social protection. Health financing is dominated by donors, who contribute 35%”.¹ The report submits that, “Restricting NGO activities will have severe consequences on the country’s already fragile economy.”

Therefore Government plans to severely regulate will have negative and far reaching effects through the PVO Amendment Bill. Worse still Government conducted no consultation process before crafting the Bill. One of the purposes of the Bill is to streamline administrative procedures and allow for the efficient regulation and administration of PVOs. There is an attempt to expand the scope of the Act

*to cover persons, legal arrangements, bodies, associations or institutions which the Minister declares in regulations to be vulnerable to misuse by terrorist organisations, or at high risk of being misused by terrorist organisations. The persons, legal arrangements, bodies etc covered by a Ministerial declaration will have to register as PVOs under the Act and will be subject not only to the requirements and obligation laid down in the Act but also to any additional requirements the Minister may specify in regulations.*²

The authors of this submission associate themselves with other submission by the NGO Sector, however the content and focus is to explore and lobby for a middle ground between PVOs / NPO and Trusts. To make the case and open

¹ A research commissioned by the Zimbabwe Human Rights NGO Forum in collaboration with the Southern Defenders and Accountability Lab revealed that Mnangagwa will be sacrificing the lives of millions for political expediency in pushing for the Bill. According to the research titled: Punching Holes into a Fragile Economy – The Possible Economic Impact of the Private Organisations Amendment Bill, millions of Zimbabweans who have been surviving on donor support would be exposed to deep hardships. NGOs provide an estimated US\$1 billion annually for social support programmes. “Owing to the huge financing gap in most sectors of the economy, the country has had to rely on donor financing from international NGOs and development partners,” the report says.

² Bill Watch 72-2021 - [The Private Voluntary Organisations Amendment Bill Part 1 Background] | veritaszim

debate on the legislative framework and regional and international treaties. Specifically the paper lays out some perspectives on Corporate Social Responsibility, Community Share Ownership Trusts (CSOTs) based on the principles of Indigenisation. These could be revised and broadened to adopt a Social Enterprise (SE)³ structure where more income streams can open up beyond the donor community to private sector. Legal professionals would have to guide as to if these SEs can be incorporated into the PVO Bill as Trust and exempted. Alternatively the Indigenisation and Economic Empowerment legislation could be amended to “house” Social Enterprises.

Although the PVO Bill may not be very clear on the basis of continuation of other Trusts not listed as being exempt there is a need to assume that all other Trusts may be subjected to the registration process if they continue to receive foreign funding and or involve themselves in what is deemed to be “political” or partisan activities. We note the following:

1. The majority of Civic Society Organisations are registered as Trusts many are already pursuing independence from foreign donor agencies as a sustainability mechanism. Many who are also Community Based Organisations are grounded within their communities and it is this grounding that positions them to be effective agents for development. Some are pursuing setting up of Social Enterprises to generate income to their mission. This sustainability approach means they cannot register as non-profits. Some Trusts are currently generating income and ZIMRA classify them as “profit making” and tax them heavily thereby compromising their capacity to fund their “mission”.

Clause 2 of the Bill permits the Registrar (i.e. the Director of Social Welfare) to prohibit trusts that are registered with the High Court, but are not registered PVOs, from collecting contributions from the public or from outside Zimbabwe for any of the purposes specified in the definition of “private voluntary organisation” (i.e. charitable purposes, social welfare assistance, legal aid and animal welfare). The Registrar will send a notice to the trustees of such a trust compelling them either to sign a sworn declaration that they will not collect contributions for those purposes, or else to register their trust as a PVO. Trustees will be able to avoid doing so only if they can persuade the Registrar that the notice was made in error.

2. The PVO Bill in its current format does not clarify the legality of Community Share Ownership Trusts (CSOT). This it seems could have been an omission or legislators perceived CSOTs as being registered under the **Indigenisation and Economic Empowerment Act [Chapter 14:33]**⁴. The stated purpose of the Act is to provide for support measures for the further indigenisation of the economy; to provide for support measures for the economic empowerment of indigenous Zimbabweans; to provide for the establishment of the National Indigenisation and Economic Empowerment Board and its functions and management; to provide for the establishment of the National Indigenisation and Economic Empowerment Fund; to provide for the National Indigenisation and Empowerment Charter; and to provide for matters connected with or incidental to the foregoing.
3. There are concerns about the principles that should be present in the PVO legislations such as the transition mechanisms, registration process, right to appeal, access to justice. Womens organisations also raise a flag on the wording of the Bill as regards the need for gender equity at Board level. Some womens organisations require a woman only board as these organisations become vehicles for women empowerment.

³ Social enterprise is a way of describing a business with mainly social or environmental objectives and they get some or all of their income from some type of trade. SE can be structured for-profit or a non-profit and can be attached to a parent NGO which can be registered as a PVO but be also funded by the SE with separate governance. The principle of good governance provides the SE with legitimacy, accountability and transparency for all stakeholders, and provides a framework for responsible decision making and safeguards for investors. In essence SEs are businesses that are changing the world for the better.

⁴ The Indigenisation and Economic Empowerment Act [Chapter 14:33] and Statutory Instrument 116 of 2010 the Indigenisation and Economic Empowerment (General) (Amendment) Regulations, 2010 (No. 2).

Introduction

On the 18th April in 1980, Zimbabwe acquired its independence. The Government of Zimbabwe inherited a dual economy that was dominated and owned by a few minority groups. A minority (4%) of the population owned most of the factors of production and the majority were regarded as cheap and semi-skilled labour in the minority owned enterprises. The challenge of the Government of Zimbabwe soon after independence was to remove barriers and limitations for the majority of Zimbabweans to enter into the mainstream economy.

For the argument for Social Enterprises to be made, it is important to look at precedent.

The principle of Community share ownership schemes/trusts was detailed in Statutory Instrument 116 of 2010 the **Indigenisation and Economic Empowerment** (General) (Amendment) Regulations, 2010 (No. 2). The amendments to the Indigenisation and Economic Empowerment Act [*Chapter 14:33*] brought by the **Finance Act, 2018** but retained the community share ownership trust principle;⁵

CSOTs were also supported by the constitution of Zimbabwe referenced as follows:

- section 13 (**National development**) (4) of the Constitution of Zimbabwe “The State must ensure that local communities benefit from the resources in their areas;
- section 14 “**Empowerment and employment creation**” of the **Constitution “(1)** The State and all institutions and agencies of government at every level must endeavour to facilitate and take measures to empower, through appropriate, transparent, fair and just affirmative action, all marginalised persons, groups and communities in Zimbabwe;
- section 282 of the Constitution of Zimbabwe “**Functions of traditional leaders**” provides that “(1) Traditional leaders have the following functions within their areas of jurisdiction—
 - to take measures to preserve the culture, traditions, history and heritage of their communities, including sacred shrines;
 - to facilitate development;

Regional and International Treaty Context

The following regional and international treaties are relevant to the argument supportive of the need for Indigenisation and Economic Empowerment:

- **Maputo Protocol** ⁶Article 15 - Right to Food Security a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food; b) establish adequate systems of supply and storage to ensure food security.
- **Maputo Protocol** Article 24 –Special Protection of Women in Distress The States Parties undertake to: ensure the protection of poor women and women heads of families including women from marginalized population groups and provide an environment suitable to their condition and their special physical, economic and social needs;
- **African Charter**⁷ Article 21 of the further recognizes the fact that “All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.”;
- **African Charter** Article 21(5) of the African Charter on Human and Peoples’ Rights “State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources;

⁵ The schemes were part of an assortment of vehicles for achieving the government’s indigenisation policy, which required that all businesses should have fifty-one percent (51%) of their shareholding under indigenous people.

⁶ The full title is - Protocol To The African Charter On Human And Peoples' Rights On The Rights Of Women In Africa Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, 11 July 2003

⁷ The full title is African Charter on Human and Peoples’ Rights

Zimbabwe priority Sustainable Development Goals highlighted

Goal 1: End poverty in all its forms everywhere

Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture

Goal 5: Achieve gender equality and empower all women and girls

Goal 6: Ensure availability and sustainable management of water and sanitation for all

Goal 7: Ensure access to affordable, reliable, sustainable and modern energy for all

Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

Goal 9: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

Goal 11: Make cities and human settlements inclusive, safe, resilient and sustainable

Goal 13: Take urgent action to combat climate change and its impacts

Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

- Article 2 of the International Convention on Economic, Social and Cultural Rights reads “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”
- Article 25 of the International Convention on Economic, Social and Cultural Rights further provides thus “Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.
- United Nations General Assembly Resolution 61/295 which provides in Article 26 thus;
 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”

Relevant Domestic Laws

The Indigenisation and Economic Empowerment Act updated as at 1st January 2021 definitions provide direction to the ways in which Government have created a policy environment.

Legislative Definitions Table No 1	
1.1	Indigenisation and Economic Empowerment Act updated as at 1st January 2021
	<ul style="list-style-type: none"> • empowerment” means the creation of an environment which enhances the performance of the economic activities of indigenous Zimbabweans into which they would have been introduced or involved through indigenisation; • The term “indigenisation” means a deliberate involvement of indigenous Zimbabweans in the economic activities of the country, to which hitherto they had no access, so as to ensure the equitable ownership of the nation’s resources; <p>An “indigenous Zimbabwean” means any person who, before the 18th April, 1980, was disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such person, and includes any company, association, syndicate or partnership of which indigenous Zimbabweans form the majority of the members or hold the controlling interest;</p>
1.2	Definitions from the Finance Act 2018
	<ul style="list-style-type: none"> • "community share ownership scheme" means a scheme referred to in section 14B of the Indigenisation and Economic Empowerment (General) Regulations, 2010, published in Statutory Instrument 21 of 2010, subject to any amendment or replacement of that section or those regulations from time to time; • "reserved sector of the economy" means the sector comprising those kinds of businesses reserved for citizens of Zimbabwe under the First Schedule; <p>"Unit" means the National indigenisation and Economic Empowerment Unit referred to in section 6A":</p>

These terms form a baseline understanding - let us examine if the Indigenisation Economic Empowerment framework has achieved its vision.

In the amendments to the Indigenisation and Economic Empowerment Act Government specified “exclusive business” amongst which were diamonds and platinum under related to the Mines and Minerals Act.

	Legislative Table - The relevant Section No 2	Comment
2.1	Section 2 of the Mines and Minerals Act refers for broader understanding; “The dominium in and the right of searching and mining for and disposing of all minerals, mineral oils and natural gases, notwithstanding the dominium or right which any person may possess in and to the soil on or under which such minerals, mineral oils and natural gases are found or situated, is vested in the President, subject to this Act”.	Under the submission Social Enterprises must have legally facilitated opportunity to participant in these extractive businesses. Government should also ensure non state actors respect, protect and fulfil community’s right of abode and their right to a safe clean environment. See also the sections of international investment Environment Economic Social Governance (EESG) principles.
2.2	3 Objectives and measures in pursuance of indigenisation and economic empowerment (1) The State shall, by this Act, or through regulations under this Act or any other law, secure that at least fifty-one <i>per centum</i> of the shares or other ownership interest of every designated extractive business, that is to say a company, entity or business involved in the extraction of such mineral as may be prescribed by the Minister in consultation with the Minister responsible for Mines and the Minister responsible for Finance shall be owned through an appropriate designated entity (with or without the participation of a community share ownership scheme or employee share ownership scheme or trust, or both). [Subsection amended by section 36 of Act 10/2020]	Community Share Ownership Trusts were focused on the Mining sector as in the Indigenisation and Economic Empowerment Act they were described as “designated extractive business” to mean a company, entity or business referred to in section 3 (1) ⁸ ;

The Finance Act 2021

For purposes of contextualising community development it is also important to here refer to the Finance Act which mentioned important new players in community development – green energy; power generation projects whose solar fields will be vastly located within rural lands. The Indigenisation and Economic Empowerment Act written perhaps before such developments were fully understood is silent on the effects on communities of these power plants.

	Legislative Table - The relevant Section No 3	Comment
	The Finance Act 2021	
3.1	13 Amendment of Third Schedule to Cap. 23:06. The Third Schedule (“Exemptions from Income Tax”) to the Income Tax Act [Chapter 23:06] is amended— 2 Amendment of section 14 of Cap. 23:04 Section 14 (“Income tax for periods of assessment after 1.-4..88”) of the Finance Act [Chapter 23:04] is amended - (a) in subsection (l) by the insertion of the following definition-- “power generation project” means any electricity generation project that commences on or after the 1st January, 2018,, and is licensed in tem1s of Part III of the Energy Regulatory Authority Act (Chapter 13:23) (No. 2 of 2011)”; ;	The Amendments provides a Tax Holiday to the Power Generation Company in (b) in subsection (2) by the insertion after paragraph (C) and (e)

⁸ Indigenisation and Economic Empowerment Act updated as at 1st January 2021 PART II

	Legislative Table - The relevant Section No 3	Comment
3.2	<i>"(e1) in respect of that part of the taxable income of a power generation project which is attributable to its operations as such, for the first Five years after the 1st January, 2018 at the percentage of each dollar of that income specified in Part II of the Schedule in respect of those years, and thereafter at the rate specified therein;".</i>	
3.3	3. Amendment of Schedule to Chapter I of Cap. 23:04 With effect from 1st Jan 2018, the Schedule ("Credits and Rates of Income Tax") to Chapter 1 of the Finance Act is amended in Parts II ("Rates of Income Tax on Taxable Income earned in Foreign Currency") by the insertion after the item relating to Section 14.(2)(c) of the following item-- <i>"14.(2)(e1) Taxable income of power generation project before the end of the fifth year of its operations as such - 0</i> <i>Taxable income of power generation project after the Fifth year of its operations as such-15</i>	Whilst Government make such provisions for the energy sector, there is no robust protection of the host communities to ensure they are able to derive shareholding and or secure rentals for use of their land as a natural resource. International standards for rental are in excess of one million united states dollars for excess of 400 hectares. This could position communities to drive serious economic development on their own terms.
3.4	15 Amendment The Third Schedule ("Exemptions from Income Tax") to the Income Tax Act (Chapter 23:06) is amended— (b) by the insertion of the following paragraph after paragraph 19--"20. The receipt and accruals of a power generation project as defined in section 14 (1) of the Finance Act (Chapter 23:04) to the extent that they accrue directly from the operations of the power generation project in any of the five years of assessment referred to in section 14.(2)(e1) of the Finance Act [Chapter 23:04]"	

Some examples of issues to be address regarding these sections follow.

Under the Communal Lands Act, ownership of all Land is legally vested in the Head of State. Rural communities merely have the right of abode. They may be evicted from their land should the Minister of Local Government change its purpose through publishing a Statutory Instrument. There are many cases of Development Induced Displacements and Resettlements (DIDR).⁹ These rural land conflicts come to the fore when Rural District Councils put profit before rural empowerment.

A. An energy company enquiry for land in the Hwange Rural District Council revealed that

⁹ Publish What You Pay Zimbabwe Coalition Calls on Government to Act on Displacements: "No to Forced Mining Induced Displacements" by Zimbabwe Environmental Law Association (ZELA) November 24, 2021. Over the years there have been significant changes in land use patterns triggered by an increase in land based investments. The footprint of land based and dependent commercial activities such as large scale commercial agriculture, mining and infrastructure development has been growing across the globe and especially in the Global South. Globally, investment in metals exploration is estimated to have increased ten-fold between 2002 and 2012, and investment in fossil fuels is estimated to have doubled over the same period (Le Billon and Sommerville 2017). There has been a significant growth of plantation agriculture as a result of the demand for food and biofuels. Notwithstanding the commercial viability of these land based investments, the most negative trade off triggered by them has been displacements of poor communities reliant on land for their livelihoods. Thus changes in land use patterns have fuelled a wave of what has been termed as Development Induced Displacements and Resettlements (DIDR). Literature has also termed these displacements as land grabbing. According to a World Bank study in the majority of cases, standards of living have declined and poverty increased amongst those affected by DIDR and especially amongst rural communities with weak land rights.

- The Hwange Rural District Council has identified, pegged out and set aside several Solar Utility Farm sites and has a standing Council Resolution that allows any qualifying Zimbabwean companies to immediately take up the sites on a 50 to 100 year leases and immediately start development of the Solar Utility Farms subject to Government approvals and licenses. This also includes the process of alteration of usage for approval for Solar Farming.
- RDC officials advised that land is available for Solar Utility Farm sites are all within a 50km radius of Hwange, Victoria Falls and Milonga National Power Grids and this proximity means the transmission costs will be low.
- The previous costing of communal land for purchase was quoted a USD 3 or USD 5 which would peg the cost for 500HA at approximately USD 2500 which is why land barons had purchased land and sold it indiscriminately causing much chaos. Government has taken measures to stop this practice by land barons but it is unclear of all the measures at present.
- Hwange RDC quoted the energy company the following annual Land Levy - 9 cents (USD) per square metre for the first 1,000,000m² (100 Ha) and 4.5 cents (USD) per square metre for every additional square metre after 1,000,000m² (100 Ha). This costing works out at approximately USD 270000 for a 500 ha solar field, well below the international costing of one million dollars.

Is the land communal or state land? Are there communities who will be relocated? The questions begging an answer for possible social enterprise by rural community. How much of this rental will be given to community as development?

- B. In addition as we note with the highly publicised case of the Chilonga Shangaan Community where Government have excised their land - 12940 hectares to be an “irrigation scheme” used to grow Lucerne. There was no consultation on any of the developments or what their role would be. They heard in the press about a series of Statutory Instruments. Whilst engagement is now a subject of Court rulings, the community need to understand and locate their development needs after the fact. Possibilities for a cooperative partnership must be explored if the community can re-establish their dignity. These communities where evicted from their earlier homes to make way for Sugar Plantations, now they are once more being moved to make way for commercial agricultural projects that do not cater for food security or food sovereignty.
- C. Other communities in Gwayi-Shangani, Bulilima, Ntalale, and Gwanda are seeing “commercial agriculture” arrive to peg their land for irrigated commercial agriculture. Mostly these commercial farmers would be preceding even the legally required consultative process before any development takes place. They sometimes even precede a sitting of the Traditional Court where the development could be presented by their traditional leader.

What is required here is amendment to the Indigenisation Act to compel investors into commercial agriculture to partners with host communities rather than evicting them. RDCs activities and modus operandis seems to be at odds with Vision 2030 and the need to facilitate empowerment of rural communities, they seem more set up to look for and facilitate corporate investment. Rural communities need facilitation to meet these corporate investors with securitised and valued land to avoid them being reduced to being “employed” rather than being the employers.

Historical Results of Community Share Ownership Trusts (CSOTs)

The vision was to be instrumentalised through Community Share Ownership Trusts (CSOTs). They were created through the then Ministry of Youth, Indigenisation and Economic Empowerment. Whilst the 2018 Finance Act subsequently repealed sections of the Indigenisation and Economic Empowerment Act, restricting provisions and requirements in respect to Diamonds and Platinum. The CSOT principle remained. Through Statutory Instrument 116 of 2010 three types of share ownership schemes were introduced. These are; the Employee Share Ownership Scheme, the Management Share Ownership Scheme and the Community Share Ownership Scheme. The schemes were part of an assortment of vehicles for achieving the government’s indigenisation policy, which required that all businesses should have fifty-one percent (51%) of their shareholding under indigenous people to benefit from the exploitation of diamonds and platinum found as local natural resources.

- A. CSOTs came into effect in 2011 and a total of 61 CSOTs were registered through deeds of trusts which provided for structural and operational procedures of the said trusts. The trusts cover all the administrative districts in Zimbabwe, with 60 of the trusts being in the rural areas.
- B. The funding of the CSOTs was to come through shareholding in various qualifying businesses operating in the local communities. The law required that every business would dispose 10% of its shares to the community in order for it to be considered as having complied with the indigenization and economic empowerment policy. However there was only part compliance by some businesses and no compliance at all by the majority.
- C. Only twenty Six (26) out of the 61 CSOTs (42%) received some form of funding from qualifying businesses.
- D. Only two qualifying businesses namely Blanket Mine (Gwanda) and PPC Pvt Ltd (Colleen Bawn) complied through the issuance of share certificates to the respective CSOTs. This translates to 3.3% of all CSOTs.
- E. As of 2018 to date fifty-five (55/61) Trusts are non- operational due to lack of funding from qualifying businesses. This effectively means that 90% of the registered Trusts are not operational.
- F. The six (6) CSOTs that are currently in operation have managed to do so due to the fact that out of the disbursements they received they have managed to invest the surplus of their resources after carrying out some community projects. This happened because the 6 CSOTs received substantial amounts from the qualifying businesses, albeit not being equivalent to the 10% shareholding required by the law.
- G. Qualifying businesses pledged a total of USD\$128 million nation-wide. However, USD\$45 million, which amount to 35% of the pledges, was actually paid.
- H. Parliaments Indigenisation and Economic Empowerment Thematic Committee presented a report to the second session of parliament in February 2015 on the operations of the Community Share Ownership Trusts and Employee Ownership Trusts. Regarding compliant the Committee reported the following
“Compliance 4.3.1 Not all Community Share Ownership Trusts have received seed capital. Only those with operating and compliant companies exploiting their natural resources have received seed capital. By March 2014, only 16 Community Share Ownership Trusts out of the 61 that were registered throughout the country were operational as some companies were yet to pay seed capital. A total of USD116.4 million was pledged to the trusts by several companies across the country and of that, about USD30 million was paid to the Trusts by March 2014.”

The committee also noted that the shareholding objective was not achieved.

4.5. Attainment of the 10% Shareholding 4.5.1 Of the six Community Share Ownership Trusts that appeared before the Committee, only one Community Share Ownership Trust namely Gwanda had attained the 10% shareholding with Blanket Mine and has a member who sits on the board.

Despite the parent Ministry being Youth specific, there was no tangible impacts for the Youth.

4.6 Youth Empowerment in the Community Share Ownership Trusts

4.6.1. Community Share Ownership Trusts are required to ensure that all infrastructure development projects engage youth through providing jobs. However, there remains a gap in Community Share Ownership Schemes to effectively address youth socio-economic needs. According to the written submission from the National Indigenisation and Economic Empowerment Board, as of March 2014, Zvishavane Community Share Ownership Trust was the only Trust that was proactive in ensuring that youth in the local communities of Zvishavane were employed.

4.6.2 Circular 1 of 2013 of the Ministry of Youth, Empowerment outlines that a quota be set aside, such that at Indigenisation and Economic Empowerment outlines that a quota such as at least 10% of the budget for all Community Share Ownership Trusts is for youth empowerment programmes. Only two Community Share Ownership Trusts out of the 6 that appeared before the Committee had complied with this requirement. These are Bindura-US\$100 000.00 and Gwanla-US\$250 000.00.

CSOT Structure through the Legal Framework

The current law dealing with CSOTs is enshrined in Statutory Instrument 116 of 2010 which established the CSOTs among others. This law was premised on the basis that qualifying business would comply with the 51%-49%

shareholding principle enunciated in the law. Through this shareholding, CSOTs would be able to conduct their own community development projects. Community share ownership schemes or trusts are registered under Statutory Instrument 116 of 2010 (General) (Amendment) Regulations as indicated above and section 14B particularly provides for Rural District Council employees, residents and or distinct community of persons whose natural resources are being exploited by a qualifying business.

	Legislative Table - The relevant Section No 4	Comment
4.1	Third schedule (section 14) Exemptions from income tax act. <i>Deductions allowed in determination of taxable income under Section15(2)(II)(i) the amount of any contribution or donation paid by a taxpayer in the year of assessment to a community share ownership trust or scheme established by the taxpayer in compliance with the Indigenisation and Economic Empowerment Act [Chapter 14:33] (No. 14 of 2007);</i>	As with Trusts receiving Corporate Social Responsibility, there is also Tax deductibility for CSOTs.

The parent Ministry of Youth Development, Indigenisation and Empowerment, exercising its powers under section 21 of the Indigenisation and Economic Empowerment Act [Chapter 14:33], with the following regulations Indigenisation and Economic Empowerment (Amendment) Regulations, 2010 (No. 2), published in Statutory Instrument 21 of 2010 as the principal regulations as amended in section 2.

	Legislative Table - The relevant Section No 5	Comment
5.1	<p>Indigenisation and Economic Empowerment Statutory Instrument 21 of 2010 as the principal regulations makes clear the following definitions:</p> <ul style="list-style-type: none"> • “management share ownership scheme or trust” means an arrangement the dominant purpose or effect of which is to enable the managerial employees of a company or group of companies to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the stock, shares or debentures of the company or group of companies concerned: Provided that a management share ownership scheme or trust shall not include a share option scheme operated for the benefit of any managerial employee; • “net asset value”, in relation to the net asset value of a business, means its net worth, that is to say, the total value of its fixed assets and other assets less the total value of its liabilities; • The following definition of “natural resources” is important to contextualise for understanding of community assets <ul style="list-style-type: none"> (a) the air, soil, waters and minerals of Zimbabwe; (b) the mammal, bird, fish and other animal life of Zimbabwe; (c) the trees, grasses and other vegetation of Zimbabwe; (d) the springs, vleis, sponges, reed-beds, marshes, swamps and public streams of Zimbabwe; (e) any landscape, scenery or site having aesthetic appeal or scenic value or of historic or archaeological interest; 	<p>The SI describes a business as one that confirms to the principles of the Indigenisation and Economic Empowerment as a “qualifying business” means a company engaged in exploiting the natural resources of any community.</p> <p>In this SI it also lists the 3 beneficiary communities as residents of a Rural District Council. Currently the RDC has the right to appoint the trustee or trustees who will hold the shares or interest in the qualifying business on behalf of the community. This would need amendment so the CSOT/ or Social Enterprise has independence to identify its own Trustees.</p>

5.2	Section 14 explains a “community share ownership scheme or trust shall be constituted by a Deed of Trust registered with the Deeds Office.....	This means that CSOTs are in legal effect Trusts and their exemption is not mentioned in the PVO Bill so they are therefore covered by the Bill.
5.3	With regard to the operational use of funding the SI details as follows: “Provided that, in considering whether a community share ownership scheme or trust set up for the benefit of a community referred to in subsection (3) (a) or (b) should be accepted as a qualifying scheme or trust, the Minister shall have regard to whether the scheme or trust provides that the monies accruing to the scheme or trust will be applied to any or all of the following purposes— (a) the provision, operation and maintenance of— (i) schools and other educational institutions and facilities and amenities connected therewith, and educational scholarships; and (ii) hospitals, clinics and dispensaries; and (c) the provision and maintenance of dipping tanks; and (d) the provision, development and maintenance of roads; and (e) the provision, development and maintenance of water works and water sanitation works; and (f) gully reclamation and other works related to soil conservation and the prevention of soil erosion, and the conservation of the environment generally.	In Section 5 the issue of dividends or other monies accruing to the beneficiaries is detailed which is expected to be recorded in a separate account of the Rural District Council. The sections also make reference to the Deed of Trust of the community share ownership scheme or trust as being the administrative vehicle. The types of activities that the CSOT can use funding must be expanded to incorporate the vision/ mission of the Trust to allow for communities to specify their own developmental priority. If a social Enterprise is formed the types of interventions would be given as a mandate.

The above frameworks clearly show that Zimbabweans have a local, regional and international framework which should guarantee their economic empowerment. They also have two structures that are supposed to oversee their development at community level – the Urban and Rural District Councils and the Traditional Leaders who have the function of protecting culture, traditions, history and heritage whilst also facilitating development.

Corporate Social Responsibility and the Human Rights Based Approach

Before the establishment of CSOTs some communities used to benefit through Corporate Social Responsibility initiated and implemented by the companies voluntarily. Companies would formulate their budgets, decided on what form the CSR would take and then deliver to communities.

	Legislative Table - The relevant Section No 6	Comment
6.1	<p>Exemptions as per the third schedule of the income tax act Chapter 23:06 Third schedule (section 14)</p> <p>2 (d) clubs, societies, institutes and associations organized and operated solely for social welfare, civic improvement, pleasure, recreation or the advancement or control of any profession or trade or other similar purposes if such receipts or accruals, whether current or accumulated, may not be divided amongst or credited to or enure to the benefit of any member or shareholder other than by way of remuneration for services rendered;</p> <p>2 (e) ecclesiastical, charitable and educational institutions of a public character</p> <p>2 (l) trusts of a public character.</p> <p>3 (f) any foreign organization that provides finance for development in Zimbabwe, to the extent that its receipts and accruals are from a project approved for the purposes of this subparagraph by the Minister</p>	It is possible that CSOTs are covered under 2 (l) “trusts of a public character... however this phrase needs description and clarification.

If Corporates support the formation of and “grant” funds to the CSOT/ Community Social Enterprise there is a more complementary partnership approach which allow the community to service their own needs on their terms. Development must incorporate Communities right to participate in decision making and receive support for livelihood benefit.

CSR is most given on the basis of an unsolicited donation. This approach violates basic principles of democratic participation and communities then become subservient to the Corporate. Current CSR Frameworks do not factor in the Human Rights Based approach which compels Corporates to understand the importance of ownership and self-agency of the community. CSR initiatives that bring a predetermined package make the community beneficiaries not co-owners of the development. The lack of ownership has effect of making communities feel the “development” is imposed and if there is infrastructure they would not feel a sense of responsibility for its care. It also means the community has not participated in their empowerment. This makes CSR unsustainable for all players including the corporate.

Definition of the Human Rights-Based Approach (HRBA)

- The human rights approach is an approach that considers that people have rights simply by the virtue of being human,
- That they are thus “rights holders” and that States, on the other hand, are “duty-bearers” who have the obligation to **Respect, Protect** and **fulfil** the human rights of the rights holders. They also have the obligation to **protect** rights –holders from “**non-state actors**” through ensuring conformity to the rights-based principles in all dealings with rights-holders. This puts the corporate sector (Non-State Actors) on the side of those obligated to deliver development and be obligated towards “rights holders”.
- And that the human rights perspective endeavours to hold States/ Non-State Actors accountable for “the realization of all human rights to all people all of the time”. In the case of Non-State actors, should they adopt a Corporate Social Responsibility (CSR) and claim tax deductibility they should be accountable for implementing the agreements reached with the rights holders.

Unpacking the Human Rights-Based Approach to Development - looking at State and Non-State Actors

- The human rights-based approach to development is based on understanding the importance of the protection of human rights with include social, economic, cultural and political rights.
- Development is not based on needs as the needs approach only tends to deal with effects rather than the core problem. Often the needs based approach reduces rights holders to being beneficiaries and or victims. Therefore when crafting CSR programmes the “need” factors must be addressed so as to maintain the community as rights holders. This should not be overshadowed by the corporates need for tax deductibility over community right to development. This means rights holders must have the space and time to spell out their development requirements so CSR is now integrated with the HRBA.
- In all cases the Human Rights-Based Approach (HRBA) must also integrate all Economic, Social and Cultural Rights (ESCR). In effect this means HRBA mainstreams interdependence and interrelatedness of human rights.

Climate Change Investment initiatives added to these perspectives as investors want sustainable business models incorporated in the bankability assessments. A key part of this is that infrastructure development projects deemed to be “green” must show engagement with the host community. Environment, Social Governance (ESG)¹⁰ or Economic, Environment, Social Governance (EESG) models now also have monitoring and evaluation reporting mechanisms adopted at COP26. The extra “E”¹¹ has been added in the context of the need for social protection which became vital during the COVID-19 pandemic. For example Green Energy Investor may not secure loans if

¹⁰ Guide To Socially Responsible Investing By The Investopedia Team Updated March 05, 2021 Gordon Scott. Environmental, Social, and Governance (ESG) criteria are a set of standards for a company’s operations that socially conscious investors use to screen potential investments. ENVIRONMENTAL criteria consider how a company performs as a steward of nature. SOCIAL criteria examine how it manages relationships with employees, suppliers, customers, and the communities where it operates. GOVERNANCE deals with a company’s leadership, executive pay, audits, internal controls, and shareholder rights.

¹¹ The extra E in ESG is Economic: Our interconnected global economy moves products and people rapidly around the planet... along with pathogen stowaways. Disease can propagate from a remote village to mega-cities in hours. Regional outbreaks become pandemics, which smother economies and decimate stock markets. US\$20 trillion in global market value gone in two months. Guide To Socially Responsible Investing By The Investopedia Team Updated March 05, 2021 Gordon Scott.

unable to show host community participation and support through the development projects. Bankability assessments much include EESG factors which includes how the corporate engages with their host community.

Government should encourage Civic Society to access local funding. Partnership with private sector could be on the basis of a corporate social responsibility with tax incentives. Therefore the need for amendments to the Finance and Income Act allowing Tax deductibility through evidence based reporting will ensure that companies opt for CSR on the basis of partnerships where their natural resources are to be harvested or land used.

Therefore there would be more beneficial economic empowerment

- Active participation and enjoyment of benefits by local communities from the exploitation of natural resources in their areas.
- Economic empowerment of communities through projects started for the communities.
- Improved livelihoods through employment creation
- Benefiting communities have an opportunity to address problems in the areas of greatest need instead of having projects chosen on their behalf
- Legal recognition for community shareholding gives the communities a voice to contribute on how resources are exploited within their communities
- CSOTs/ Social Enterprises will become instrumental in the development of their areas and will actually be keen to see their environment exploited in a sustainable manner.
- Structure is cared for by communities who are “securitising” their development and see an increase in their District GDP as their success.
- Companies may also accompany their CSOT/ CSE in its growth and transfer capacity for administration, skills, and technology.
- Expand or create new value chain cooperation
- And many other socially and economically beneficial opportunities.

THE RECOMMENDATIONS

Community Share Ownership Trusts were not successful facilitators of community development. Under the current PVO Bill, it is unclear if these Trusts will still be able to operate or even if they fall within the ambit of the PVO Bill. The principle of Community Share Ownership Trusts be broadened to Community Social Enterprises. They could be incorporated as exempt under the PVO Bill and that they are allowed to retain their “Trusts” structure. As Community Social Enterprises, they could have Board members resident within the operational area.

Social Enterprises

In the abstract of a paper for the National Association of Social Workers, Rangarirai/Muranda explains a Social Enterprise as follows:

The integration of economic and social value creation through social entrepreneurship has become a global phenomenon. Only recently, social work practitioners, researchers, and academics have begun to explore social entrepreneurship including its significance to social work practice....social enterprise as an innovative and dynamic approach to social work practice which addresses complex societal challenges within a constrained but constantly changing environment. Since social entrepreneurship embraces the application of business acumen to raise income for the purposes of supporting a social mission, its application to social work practice in Zimbabwe’s voluntary sector has become indispensable, given the dwindling state and donor funds to support and sustain social services delivery. The paper underscores that since social enterprise is premised on a culture of innovation, openness and adaption, it represents a hands-on approach to sustainable community economic development. This article concludes by proposing strategies for incorporating entrepreneurial initiatives in community and social sector agencies. Furthermore, the paper calls upon Zimbabwean social work educators to incorporate the concept of social entrepreneurship as it resonates with contemporary social work practice.¹²

¹² African Journal of Social Work, 6(1), June 2016 30 Volume 6 Number 1 2016 © National Association of Social Workers-Zimbabwe/Author(s) *Social Enterprise As The Game-Changer: Embracing Innovation And Dynamism In Contemporary Social Work Practice In Zimbabwe* Author details: School of Entrepreneurship and Business Sciences, Chinhoyi University of Technology, 78 Magamba Way, P. Bag 7724, Tel: +2636727502, Chinhoyi, Email: rangarirairank@gmail.com

The authors of this submission therefore wish to engage Government on the following possibilities

Option A – Incorporate Social Enterprises as Trusts under the PVO Bill framework as an exception within the principles of the Indigenisation and Economic Empowerment Act. This must be done within a framework where tax exception is allowed. They can operate under Ministry of Public Service, Labour and social Services.

Option B – Allows Social Enterprises to register a Deed of Trust under harmonised principles of the Indigenisation and Economic Empowerment Act, Finance Act and other legislation into and Economic Empowerment Act. They can operate under Ministry of Women Affairs, Community Small and Medium Enterprises Development or Ministry of Finance and Economic Development.

Under both options Government should update and amend the Indigenisation and Economic Empowerment Act and its relevant Statutory Instruments to cover community led development on the following as noted in the Indigenisation and Economic Empowerment Statutory Instrument 21 of 2010

- A. The following definition of “natural resources” is important to contextualise for understanding of community assets
 - (a) the air, soil, waters and minerals of Zimbabwe;
 - (b) the mammal, bird, fish and other animal life of Zimbabwe;
 - (c) the trees, grasses and other vegetation of Zimbabwe;
 - (d) the springs, vleis, sponges, reed-beds, marshes, swamps and public streams of Zimbabwe;
 - (e) any landscape, scenery or site having aesthetic appeal or scenic value or of historic or archaeological interest;
 - (f) development created commercial agriculture created irrigation opportunities such as those found at the sites of new Dams or at the confluence of Dams.
- B. That Host Communities originating projects and or development initiatives related to the above natural resources listing should have the option for legalised ownership (fifty-one percent -51%) in Joint Venture partnerships falling into the following investment projects.
 - Commercial agriculture
 - Green energy projects
 - Mining ventures
 - Wildlife Conservation
- C. Investment Companies initiating projects or development initiatives related to the above must jointly lease land from host communities. This will assist communities to bring security into a shareholding.
- D. Government in the spirit of the Indigenisation and Economic Empowerment Act will provide communities with a first refusal of any leases, land offers and other assets related to above investments. This will need amendment of the Communal Land Act to incorporate the consultation process and the first refusal of lease. In the longer term Zimbabwe will have to regularise the right to private title.
- E. Social Enterprises would self regulate with community selecting their own Trustees and provide a conducive operating environment for community development and investment.

In all the above circumstances, compliance with such laws must be mandatory and those who do not comply must be denied registration status as a company and of have assets confiscated if already registered.

General Comments

- F. Government needs revamp the social work degrees and enhance professionalism in this field. The right to social protection has come to the fore as part of global Covid-19 pandemic. The degree must also combine with capacity to do entrepreneurial skills development so as to more effectively cause community level empowerment. Positioning social work practitioners to embrace social entrepreneurship will complement their existing but inadequate tools in addressing increasingly societal problems. Adoption of the hybrid model by social work practitioners allows them to combine non-profit and profit making activities. This new degree will motivate community financial independence, self-reliance and effectiveness of social service

organizations within the non-profit sector in Zimbabwe. This will also encourage the uptake and incorporation of social entrepreneurship by social services practitioners in the non-profit sector

- G. These newly trained Social workers can also assist various sectors to set up social enterprises where feasible, or rather incorporate specific elements of social enterprise through the adoption of commercial income earning strategies as an alternative measure of invigorating and diversifying their revenue streams. Social Enterprises under Chieftainships, in Schools and other spaces that require empowerment models.
- H. This submission is also a challenge to the NGO sector to embrace other income streams and register as Social Enterprises. They can then also lobby for strong legislative and policy framework that creates favourable conditions for social entrepreneurship. Civic Society would also assist to lobby for host communities to be front and center in terms of development projects around them and access to affordable capital. They can also lobby for tax incentives from fiscal authorities.
- I. The non-profit sector could benefit from short entrepreneurial skills training so as to receive and benefit from professional advice on how to run business elements of their organizations in a competent and professional manner and to remain competitive and strategically positioned to respond to economic opportunities on the market. The NGO sector could also have dual registration of PVOs which fulfil a mission and an accompanying social enterprise to turn profit into a grant for the sister PVO.
- J. Social Enterprises open up opportunities for private sector to secure tax incentives and to also expand revenue streams and value chains. By partnering with the communities around them Companies can transfer skill and increase the social capital around their locations. This will in terns develop a strong pool of human resource recruitment for them. By consulting on and then implementing consulted CSR programmes companies can more easily also fulfil social obligations.
- K. As the options are considered the Minister of Public Service, Labour and Social Services is encouraged to conduct field visits to social enterprises so as to understand the legislative framework within the Africa and be able to innovate for progressive legislation. The Ministry may benefit from new knowledge for enhancing the incorporation of social entrepreneurial ventures in the practice of social work to alleviate social problems and human suffering found as a result of the global pandemic.
- L. Social Enterprises could have a role of capacitating communities to negotiate for fair pricing and to demand their right to fair trade.

In conclusion, the Social Enterprise Consortium is available to explain the principles regarding this proposed legislation and also the principles that should form any such law to be developed.

The endorsing organisations are

1. **Women of Zimbabwe Arise (WOZA)**
2. **Lupane Womens Development Trust (LWDT)**
3. **Phathisani Community Based Organisation**
4. **Trinity Project (TP)**
5. **Maranatha Orphans Care Trust (MOCT)**
6. **Dinah Falala and Phoebe Sandi Foundation (DP Foundation)**
7. **Sakhisizwe E & S Development**
8. **Sibanye Animal Welfare and Conservancy Trust**
9. **#Whispers**
10. **Renewable Energy for Sustainable Development (RESO) Trust**
11. **Lupane Youth for Development Trust (LYDT)**
12. **Tikobane Trust**
13. **Inkhanyezi Development Trust (IDT)**
14. **Nurture Imvelo Trust**
15. **Limpopo Basin Development Trust (LIBADE)**

¹ **OTHER RELEVANT LEGISLATION**

1. The Rural District Councils Act
2. The Communal Lands Act