

The potential effects of the PVO Amendment Bill on Community Philanthropy

A P O L I C Y B R I E F

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Introduction

The Government of Zimbabwe recently announced its intentions to change the existing Private Voluntary Organisations (PVO) Act so as to limit cases of money laundering and to prevent non-state actors from taking part in political activities.¹ If passed, the Act will negatively affect public sphere activities especially the smaller organisations that are actively involved in community-based charity work in marginalised communities. Some of its aspects have been mooted to be unconstitutional² and arbitrary³ making it impossible for many organisations to get formally registered and operate. These organisations have helped the government by providing social and economic goods to the affected areas. Their goals have complimented the government's development goals. This policy brief recognises the need for revising the existing PVO Act which has many loopholes. Therefore, the aim of this policy brief is to suggest ways that the government can make meaningful changes to the existing PVO Act without affecting the important work that is being done in communities.

Background

Community philanthropy organisations are locally driven entities that aim to strengthen community development, capacity and leveraging local resources. These organisations are in most cases membership based, and they mobilise resources internally as well as from external agents of development. According to a survey carried out by SIVIO Institute, community organisations are spread across all the ten provinces of Zimbabwe, they are mostly registered as Trusts and some of them have been in existence since the pre-independence period. They mostly focus on children's rights, livelihoods support, community development and increasing access to social goods such as health, education, and service delivery. Their origins vary- some emerged out of NGO led processes, government policy or from within the community. Traditional community philanthropy organisations include formal entities such as burial societies, loans and savings groups and community-based development organisations. Recently we have seen the emergence of entities that mobilise resources for

1. Memorandum to the Private Voluntary Organisations Amendment Bill H.B. 10 2021 [GN 3107 OF 2021].

2. Veritas 'Bill Watch 74-2021 - [Analysis of the PVO Amendment Bill]' <https://www.veritaszim.net/node/5352> [accessed 4 April 2022].

3. Veritas 'Bill Watch 72-2021 - [The Private Voluntary Organisations Amendment Bill Part 1 Background]' <https://www.veritaszim.net/node/5352> [accessed 4 April 2022].

development projects from within the community and from members of the same community who are based in the diaspora. These entities have revived bridges, built classroom blocks, improved access to water and many other development projects. There are also entities that were established during the Robert Mugabe administrative era of radical indigenisation- the Community Share Ownership Trust (CSOTs). These were established within communities adjacent to big mining companies. Their role is to receive a portion of the dividend from the mining companies and use it towards community development. To date, these entities have built new schools, clinics, roads, mortuaries and contributed to the upgrading of old schools' infrastructure. Some of these entities engage with government policy especially in mining communities. While their contribution towards socio-economic development has not been adequately measured, their work has provided support in the following ways:

- ▶ Community development resource mobilisation
- ▶ Last mile support to NGO service delivery projects
- ▶ Raising awareness on issues affecting local communities
- ▶ Developing home-grown solutions to problems faced
- ▶ Empowering disadvantaged households within communities
- ▶ Knowledge generation and research on community challenges
- ▶ Enhancing youth participation for development

The reality is that these entities are in most cases, first responders within rural and urban communities in emergency situations such as bereavement, food insecurity, children living without an adult and requiring support within rural and urban areas.

The PVO Bill

In November 2021, the Government of Zimbabwe published the PVO Bill in the Government Gazette. This legal instrument was crafted to regulate the existence and operations of all voluntary organisations. The Bill's scope directly affects organisations focusing on physical and social needs, charity, legal aid, animal welfare and resource mobilisation. Religious bodies, statutory

institutions, political organisations, and educational trusts are amongst the entities excluded from the regulations of the Bill.

According to its memorandum, the Bill was crafted to comply with the Financial Action Task Force Recommendations against money laundering⁴ as well as to enhance efficient regulation of voluntary organisations and to prevent organisations from participating in political lobbying. However, the PVO Bill in its current state poses a threat on the independence and operations of voluntary organisations. Below is a list of expected effects of the Bill:

- ▶ Every registered trust in Zimbabwe will lose its legal personality and become an unlawful entity until it is registered as a PVO in terms of the PVO Act.
- ▶ Trusts registered with the High Court without registering as PVO's will be prohibited from fundraising and collecting any contributions from internal and external players through a sworn declaration.
- ▶ PVO's will be prohibited from engaging in political activities although the Bill does not define what these political activities involve.
- ▶ A PVO deemed to be conducting political activities will have its registration cancelled.
- ▶ Government will be able to interfere with the operations of Trusts by compelling an appointment of any individual of its choice to the position of a Trustee who will run the affairs of the Trust for a period not exceeding 60 days.
- ▶ The state will have the power to summarily dissolve any Trust that is deemed to be critical of the government.
- ▶ Every Trust that conducts internal and external fundraising will have its books and accounts monitored by the government.
- ▶ Government will monitor any material amendment of the constitution of a Trust.
- ▶ The government will have the discretion to interfere with the programming and decision making of a Trust through the PVO Board.

4. Recommendation 3 of Financial Action Task Force (<https://www.cfatf-gafic.org/documents/fatf-40r/368-fatf-recommendation-3-money-laundering-offence>) accessed 4 April 2022.

- ▶ The PVO Board will be able to impose any new conditions for the registration of a PVO according to its own discretion.
- ▶ The responsible minister will be empowered to inspect the operations of a registered PVO.
- ▶ Government will be empowered to suspend the committee of a PVO if the minister considers the entity to be mismanaged or views suspension as a necessary or desirable measure for public interest. This would be unlawful as it contravenes an extant Supreme Court judgment on the right to a fair hearing of organisations.⁵
- ▶ Members of a PVO deemed to be conducting operations contrary to the Bill will be subject to imprisonment.

PVO Bill Impact on the National Development Strategy One and SDG's

Noting the developmental nature of the work conducted by community philanthropy organisations, it is key to highlight that these entities contribute towards the realisation of Vision 2030⁶ and Sustainable Development Goals.⁷ The reality is that government alone cannot reach every household and achieve its development strategy. Governments need non-state actors especially those involved in the delivery of social and economic goods. Thus, government should work in collaboration with other non-state actors in order to achieve sustainable development. If the government goes ahead with the Bill, the chances of achieving the aspirations of the National Development Strategy One will be significantly reduced.

5. Holland & Ors v. Minister of the Public Service & Ors, 1997 (1) ZLR 186 (S).

6. National Development Strategy 1 2021–2025 (2021).

7. UN General Assembly, Transforming our world : the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, available at: <https://www.refworld.org/docid/57b6e3e44.html> [accessed 4 April 2022]

The PVO Bill negatively affects achievement of several SDG's⁸ in the following ways:

- ▶ SDG 1 on ending poverty: some organisations working on poverty reduction might permanently lose their legal status and will have to stop their operations.
- ▶ SDG 2 on ending hunger: some organisations working on food aid will face restrictions on fundraising and resource mobilisation.
- ▶ SDG 4 on providing quality education: this will be negatively affected due to the limitations on resource mobilisation.
- ▶ SDG 6 on provision of clean water and sanitation and affordable and clean energy: organisations criticise the government's service delivery may have their registration cancelled.
- ▶ SDG 8 on creation of decent work and economic growth: will be affected in two ways; on the one hand the elimination of organisations that criticise government failures in employment creation and economic growth, and, on the other hand through the termination of employment of thousands of Zimbabweans employed in the affected organisations.

What will happen if Government Continues with the Bill?

- ▶ First, Zimbabwe is already regarded as an insecure destination for donor funding. Currently, there are many donors who will not bring funds in Zimbabwe. Government rhetoric suggests a donor led regime change agenda and thus, government has generally been hostile to donor organisations. However, there is no evidence to support that all donors from all over the world are interested in regime change. There are many well-meaning donor countries and organisations that have continued to work in Zimbabwe despite the uncertainties to do with currency stability, unclear laws and heightened partisan-based polarisation. The proposed law will bring forth a new wave of donor flight and this will further weaken the national development agenda of opening Zimbabwe for

8. In fact the UN recognises that the SDGs can only be realised with strong global partnerships and cooperation. A successful development agenda requires inclusive partnerships — at the global, regional, national and local levels — built upon principles and values, and upon a shared vision and shared goals placing people and the planet at the centre (<https://www.un.org/sustainabledevelopment/globalpartnerships/#:~:text=The%20SDGs%20can%20only%20be,the%20planet%20at%20the%20centre>).

national, regional, and international business.

- ▶ Second, the non-state or civil society organisation space is a significant source of free funds. According to the Ministry of Finance and Economic Development, in 2021 alone, the free funds that were channelled into the Zimbabwean economy by NGOs were USD975.16 million.⁹ There is likely going to be a significant decline of these free funds if the Bill is passed.
- ▶ Third, the sector is increasingly growing to be a major source of employment for many graduates from universities and other tertiary institutions. This will be negatively affected if NGOs face closure due to the change in law.
- ▶ Fourth, civil society organisations (CSOs) are globally recognised as credible sites of innovations and leadership development. Locally, innovations such as Pfumbvudza and rainwater harvesting were first developed and piloted by NGOs before being adopted by government. Traditional systems such as ‘Zunde raMambo/isiphala seNkosi’ have been further refined by NGOs to create community resilience. The two were agrarian measures adopted by civil society through its participation in impoverished communities to enhance food security.

Possible Policy Reforms

It cannot be overstated that the proposed bill will worsen the operating environment for civil society-based organisations. There is need to go back to the drawing board and consult widely on best practice from practitioners, beneficiary communities and best practices from other countries. Government must take into consideration three viable options which will be less destructive to the operations of CSOs.

OPTION ONE- SUSPEND THE ONGOING CONSULTATIONS AND CONSULT ON A NEW BILL

The ongoing Parliament led consultations are symptomatic of the existing superficial approaches to participation. Government should consult further on the Bill in order to craft its provisions in a way that will not be regressive towards carrying out of development work.

9. Reserve Bank of Zimbabwe Monetary Policy February 2022 (2022).

There is no evidence that government invited stakeholders to co-design the draft Bill. In fact, there is no platform for such discussions to take place given the existing mistrust between the two parties. Stakeholders are being invited to make an input into an already drafted Bill. There is need for an opportunity for stakeholders to make new recommendations on the process itself and what the Bill should contain. This could be an opportunity to build bridges between the involved parties.

OPTION TWO: RECOGNISE CATEGORIES/ SUBSECTORS OF ORGANISATIONS WITHIN CIVIL SOCIETY.

As already mentioned, civil society is extremely broad and in it are a variety of organisations. Some of them, such as the human rights (civil and political) entities, are seen by government as confrontational and anti-state. However, these are a small part of civil society. In dealing with civil society organisations, government must consider different legislative standards for different sub-sectors of civil society. The current blanket approach is very costly to entities such as community philanthropy organisations which have no capacity to resist government's intrusion. Furthermore, such a differentiated approach will expose government's real intentions about the public sphere.

OPTION THREE- PROMOTE THE ESTABLISHMENT OF A PEER LED COUNCIL FOR REGISTRATION OF CSOS.

Professional fields such as the legal, pharmaceutical, medical and media have their own peer led processes of registration. Government should consider an actor led approach in the registration and compliance of entities within civil society. Such a process does not necessarily have to exclude government. There could be a government representative in such a proposed council. However, the most important part would be the creation of processes and procedures that allow for ease of registration and ongoing compliance with clearly defined conditions on what happens in the event of non-compliance. Such an approach would be conducive for other partners such as funders and beneficiary communities.

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About SIVIO Institute

SIVIO Institute (SI) is an independent organisation focused on ensuring that citizens are at the centre of processes of socioeconomic and policy change. It aims to contribute towards Africa's inclusive socio-economic transformation. It is borne out of a desire to enhance agency as a stimulus/catalyst for inclusive political and socio-economic transformation. SIVIO's work entails multi-disciplinary, cutting edge policy research, nurturing citizens' agency to be part of the change that they want to see, working with communities to mobilize their assets to resolve some of the immediate problems they face.

SIVIO institute has three centres/programs of work focused on; (i) public policy analysis and advocacy (ii) philanthropy and communities (ii) entrepreneurship and financial inclusion. In the process SI addresses the following problems:

- ▶ Inadequate performance of existing political and economic system
- ▶ Increasing poverty and inequality
- ▶ Limited coherence of policies across sectors
- ▶ Ineffectual participation in public processes by non-state actors
- ▶ Increased dependence on external resources and limited leveraging of local resources

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