

Submissions to: The Ministry of Finance and Economic Development, Government of the Republic of Zimbabwe

Submitted by: The Zimbabwe Heads of Civil Society Coalitions and Networks

RE: Private Voluntary Organisations (PVO) Amendment Bill H.B. 10 of 2021

Date: 10 March 2023

A. INTRODUCTION

We represent a diverse collective of CSO coalitions and networks¹ that compliment government's leadership along a variety of developmental national priorities as stipulated in our national development strategies and plans. Specifically, we are the Zimbabwe Heads of Civil Society Coalitions and Networks which is comprised of 20 apex bodies of CSOs operating in Zimbabwe on various thematic issues to compliment government's leadership along a variety of developmental national priorities as stipulated in our national development strategies and plans.

We respectfully make these submissions in response to a request from the Ministry of Finance and Economic Development dated 27 February 2023. The request followed the participation of CSOs in a consultative meeting as part of the Structured Dialogue Platform Meetings for Zimbabwe's Arrears Clearance and Debt Resolution Process.

We welcome, with great appreciation, the opportunity to make these submissions. We submit that we have already made several submissions to various governmental offices and officials, and have been in various engagements, as detailed in **ANNEXURE I** hereto. Unfortunately, our submissions have thus far not translated into any of the provisions in the final version of the Bill now awaiting Presidential assent.

We hope and trust that our submissions will be taken into consideration by the Ministry of Finance and Economic and considered with the requisite merit.

B. FINANCIAL, ECONOMIC, GOVERNANCE AND SOCIAL CONTRIBUTIONS OF CSOS TO DEVELOPMENT IN ZIMBABWE

Zimbabwean community-based organisations (CBOs), non-governmental organisations (NGOs) and civil society organisations (CSOs) have been a part of Zimbabwe's development and democratic trajectory since pre-independence, helping and supporting the liberation struggle and its ideals. Since independence, these organisations have stepped up to provide complimentary support to government-led developmental, social and emergency interventions. This includes, but is not limited to, responding to climate-related catastrophes, providing support for vulnerable and marginalised people with disabilities, mental health concerns and who are survivors of gender-based violence.

The contributions of civil society organisations to Zimbabwe's health care sector have resulted in reduced incidents of child marriage, child and maternal mortality, controlling the rates of malaria, HIV and AIDS. Most recently, civil society organisations were essential partners with

¹ The Zimbabwe Heads of Civil Society Coalitions and Networks represented in this submission are: Alliance of Community Based Organisation (ACBOS); Crisis in Zimbabwe Coalition (CiZC); Content Creators Networks Zimbabwe (CCNZ), Education Coalition of Zimbabwe (ECoZ); Media Alliance of Zimbabwe (MAZ); National Transitional Justice Working Group (NTJWG); National Association of Youth Organisations (NAYO); National Association of Non-Governmental Organisations (NANGO); National Association of Societies for the Care of the Handicapped (NASCOH); Women's Coalition of Zimbabwe (WCoZ); Zimbabwe Aids Network (ZAN); Zimbabwe Coalition on Debt and Development (ZIMCODD); Zimbabwe Heads of Christian Denominations (ZHCD); Zimbabwe National Students Union (ZINASU); Zimbabwe Election Support Network (ZESN); Zimbabwe Institute (ZI); Zimbabwe Human Rights NGO Forum; and Zimbabwe Congress of Trade Unions (ZCTU).

government in responding to and mitigating the COVID-19 pandemic. Further, CSOs assist households that are food insecure to secure a daily meal, and contribute to the welfare of the employed.

CSOs advance the objectives of ensuring water and sanitation (WASH) access as well as food sovereignty in Zimbabwe by providing invaluable skills, training and essential inputs to small scale subsistence as well as new commercial farmers. This avails critical value addition pathways and promotes market access for Zimbabwe's mainly black farmers and for their agricultural produce.

Further, CSOs play a pivotal role in protecting the environment, through tree planting and ecological programmes at the community levels. CSOs have been a vibrant partner with government in the promotion of human rights domestically and have supported Zimbabwe's ascension to critical international human rights statuses.

From a governance perspective, CSOs played a central role in setting the agenda for a people-driven, forward-looking and aspirational Constitution which was adopted in May 2013, and CSOs have continued to play a central role in the operationalising of that supreme law, including through active partnership and support to the Inter-Ministerial Taskforce (IMT) on Legislative Alignment and government-led law reform processes.

In this respect, CSOs are genuine partners with government in fulfilling the ambitions of Zimbabwe's National Development Plan (NDP) 1 and Vision 2030. The long-standing co-operation between government, development partners and NGOs has ensured that Zimbabwe stands tall with pride for scoring high on several Sustainable Development Goals (SDGs) as well as achieving the human rights targets and goals it agreed to at the global level.

CSOs' contributions to Zimbabwe's macro-economic stabilisation efforts are evident through the regular accrual of foreign currency receipts to the government of Zimbabwe's fiscus. The Zimbabwe Revenue Authority (ZIMRA) (and the Zimbabwean banking sector) can attest to the significant nature of foreign exchange receipts from CSOs through regular deposits, tax contributions as well as duty and VAT.

In addition, CSOs support the education of the under privileged. They provide scholarships and bursaries to university students and offer Zimbabwean graduates professional job opportunities, contributing towards mitigating unemployment.

The continued operation of CSOs will ensure that the government and people of Zimbabwe will continue to draw significant material and social dividends from the effective partnership that state and non-state actors currently share. In view of Zimbabwe's delicate fiscal space, Zimbabwe's government would be burdened if it were to shoulder this important national responsibility single-handedly. Development partners and civil society organisations are providing significant social protection and humanitarian assistance to Zimbabweans in all remote hard to access parts of the country.

Disrupting this collaborative effort has far-reaching, long-term implications for Zimbabwe's current negotiations for Arrears Clearance and Debt Resolution. Good economic governance encourages the existence of a vibrant, independent and pro-active CSO sector and recognises that it positively contributes to the welfare of all vulnerable and marginalised people. For instance, the African Development Bank (AfDB) notes that "engaging with Civil Society will help it achieve its priorities of inclusive, sustainable development. Since the beginning of his

mandate, President Akinwumi Adesina has stressed the importance of engaging with civil society in achieving the Bank's "[High 5](#)"² priorities. The Bank has subsequently renewed its commitment to mainstreaming civil society engagement, creating a new Department: Gender, Women and Civil Society, with a [Civil Society and Community Engagement Division](#)³ dedicated to civil society engagement".

C. CSO CONCERNS ABOUT OPERATING ENVIRONMENT

Concerned about the tense operating environment that has arisen in Zimbabwe since the tabling of the PVO Amendment Bill, and how it has adversely affected CSOs, we therefore respectfully make the following submissions to the Ministry of Finance and Economic Development in the hope that the Ministry will give them due consideration.

i. [Financial and economic implications of the PVO Amendment Bill](#)

We attach as **ANNEXURE II** a report titled ***Punching Holes Into a Fragile Economy: The Possible Economic Impact of the PVO Amendment Bill, 2021*** which was published by CSOs in February 2022.⁴ The report documents the disruptive potential of the PVO Amendment Bill of 2021 to Zimbabwe's fragile economic growth prospects, given that according to the Reserve Bank of Zimbabwe, our economy is dependent of diaspora remittances and development support as second and third foreign income earners in Zimbabwe respectively, after export receipts.⁵

ii. [Enforcement of unlawful practices](#)

Some government authorities, especially at local government level, are enforcing unlawful practices. CSOs have been instructed to sign MOUs with local authorities in order to be able to work. We highlight the illegality of this as well as make note of requests for facilitation fees of significant values for the said MOUs to be signed. There are also areas where some governmental authorities are making references to the PVO Amendment Bill in making arbitrary demands of some CSOs for them to be able to operate.

iii. [CSOs position on regulation](#)

We are concerned that CSOs have been improperly and incorrectly portrayed as refusing to be regulated. This has arisen in part because of our efforts to engage the various arms of government in order to negotiate revisions to the PVO Amendment Bill. We attach *Annex I* outlining our various attempts at opening avenues for dialogue with government on the PVO Amendment Bill. Where we have believed that we are in dialogue with the various government authorities that has elicited our inputs, we have not had our inputs considered. Instead, the PVO Amendment Bill has been amended. The amendments are stricter. Further, they do not align with Zimbabwe's Constitution.

iv. [The stated objectives of the PVO Amendment Bill vis CSO regulation](#)

² See <https://www.afdb.org/en/high5s>

³ See <https://www.afdb.org/en/topics-and-sectors/topics/civil-society/the-civil-society-and-community-engagement-division>

⁴ Released in February 2022, this report was prepared by civil society organisations under the banner of the Zimbabwe Human Rights NGO Forum, Accountability Lab Zimbabwe and Southern Defenders.

⁵ RBZ Monetary Policy Statement, February 2022

We are concerned that the PVO Amendment Bill is unnecessary to address the stated objectives of the Bill. The Bill has been justified as a necessary mechanism to:

- i. Combat money laundering in accordance with Recommendation 8 of the Financial Action Task Force (FATF);
- ii. Fix the regulatory environment; and,
- iii. Address the perceived CSO interference in politics and funding of political parties.

However, regarding;

i. **Money laundering**

There is no evidence that CSOs are engaged in money laundering in Zimbabwe from the Financial Intelligence Unit, the FATF and the Zimbabwe Anti-Corruption Commission (ZACC). The second money laundering and terrorist financing national risk assessment key findings report for Zimbabwe (2021) states that the national money laundering threat for Zimbabwe was assessed to be medium low with a score of 0.52, using a scale of 0 to 1.⁶ Twelve sectors were assessed and the high threat level sectors were found to be Banking, Real Estate, Motor Vehicle Dealers, Mining and Mobile Money dealers. NGOs were not identified as amongst those posing risks.

The overall terrorism and terrorist financing threat in Zimbabwe was rated low. In fact, the Financial Action Task Force removed Zimbabwe from the Grey List on 4 March 2022. As of 4 March 2022, Zimbabwe has been designated “Jurisdiction No Longer Subject to Increased Monitoring by the FATF”. According to FATF, “*The FATF welcomes Zimbabwe’s significant progress in improving its AML/CFT regime. Zimbabwe has strengthened the effectiveness of its AML/CFT regime and addressed related technical deficiencies to meet the commitments in its action plan regarding the strategic deficiencies that the FATF identified in October 2019. Zimbabwe is therefore no longer subject to the FATF’s increased monitoring process. Zimbabwe should continue to work with ESAAMLG to improve further its AML/CFT system, including by ensuring its oversight of NPOs is risk-based and in line with the FATF Standards*”.

In view of the foregoing, the persistence of the Bill suggests that there are other motives for the Bill. In particular as Zimbabwe already has a very sophisticated and comprehensive legal framework to address money laundering through laws that include:

- i. Fraud and corruption - Criminal Law (Codification and Reform) Act [*Chapter 9:23*];
- ii. Customs and Excise Act [*Chapter 23:02*];
- iii. Gold Trade Act [*Chapter 21:03*];
- iv. Money Laundering and Proceeds of Crime Act [*Chapter 9:24*]; and the
- v. Income Tax Act [*Chapter 23:06*].

The Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG) and FATF have made it clear that some jurisdictions were misusing the FATF Recommendation 8, and that the Recommendation has had unintended consequences. In June 2022, some UN Human Rights Special Procedures produced *The Human Rights and Rule of Law Implications of Countering*

⁶ FATF, ESAAMLG Follow-Up Report to Zimbabwe’s assessment of anti-money laundering and counter-terrorist financing measures, April 2021, <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fur-zimbabwe-2021.html>

the Financing of Terrorism Measures paper which examines the unfortunate unintended consequences of the counter-financing of terrorism measures on human rights and civic space.⁷ The paper notes, “*The [Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism]’s mandate expresses deep concern that CFT measures have increasingly been implemented in marked contravention of fundamental international law norms, including CFT-specific obligations and broader international law obligations*”.

It is our humble submission that the true sources of money laundering in Zimbabwe are unrelated to NGOs. There would be a negligible redress of Zimbabwe’s money laundering problems were NGOs to cease operating in Zimbabwe.

Regarding;

ii. **Regulatory framework**

Zimbabwe already has a clear CSO regulatory framework. PVOs are registered under the Private Voluntary Organisations Act. Trusts are registered through the Deeds Registries Act [*Chapter 20:05*] via the Deeds Office which falls under the Ministry of Justice. *Common law universitas* exist by virtue of the common law which is part of our legal system. All existing Zimbabwean laws, whether civil and/or criminal apply to all NGOs.

The registration mechanisms are widely known to and used by all relevant stakeholders, including the government, donors; the international community; banking institutions; the tax authorities; and the Reserve Bank of Zimbabwe.

Those in conflict with the law are not spared from the reach of the law.

Regarding;

iii. **Perceived funding of political parties**

There is already an Act to regulate financing of political parties, the Political Parties (Finance) Act [*Chapter 2:11*].

D. PROCEDURAL CONCERNS WITH THE PVO AMENDMENT BILL 2021

In short, it is unnecessary to expend government’s precious resources reviewing the existing regulatory framework. However, should the government insist that revisions should be made as reflected in the PVO Amendment Bill that was passed by Parliament, we make the following submissions.

- i. The PVO Amendment Bill (that is now either before the President or on its way to the President for his assent,) is not the same Bill that was taken to the public for consultations in February and March 2022. The Bill has materially changed.
- ii. The additional amendments which extensively revise the Bill, introduced new provisions that were not in existence when the Bill was taken for public hearings.

⁷ United Nations Human Rights Special Procedures, *The Human Rights and Rule of Law Implications of Countering the Financing of Terrorism Measures* (June 2022), <https://www.ohchr.org/sites/default/files/2022-06/2022-06-13-SRCT-HR-CFT-Position-Paper.pdf>

- iii. This violates the public's constitutional right to participate in law making per section 141 of the Constitution of Zimbabwe, as the authorities have a constitutional obligation to consider the views of the public.
- iv. The amendments were also introduced in Parliament without giving Members of Parliament (MPs) notice of the debate.
- v. Some MPs who tried to participate in the debate virtually experienced obstruction.

E. SUBSTANTIVE CONCERNS WITH THE PVO AMENDMENT BILL 2021

1. New registration requirements

Overall Concern: If adopted the amendments will result in gross violations of the following rights which are protected in Zimbabwe's Constitution: the **right to freedom of association and assembly** (section 58 of the Constitution) and the **administrative justice** (section 68 of the Constitution).

Organisations that are currently operating lawfully as trusts and associations will immediately be rendered unlawful upon the passing of the Bill if they continue to operate and they receive donations from the public or donations from sources that are outside the country. Staff members employed by these organisations will also be held criminally liable for asserting their right to **freedom of association** (section 58 of the Constitution) with such organisations, once the Bill is passed into law, and pending the Registrar's determination of their applications for registrations. As there are no timeframes, these organisations could be left in limbo indefinitely. This abrupt cessation of activities will also violate the **labour rights** of the employees of the affected organisations guaranteed in section 65(1) of the Constitution that guarantees fair and safe labour practices for everyone.

Beneficiaries receiving life-saving humanitarian and social services that were previously provided by the Trusts or Associations will be left without this support violating their **rights to food and water** guaranteed in section 77 of the Constitution stating that every person has the right to safe, clean and potable water; and sufficient food. Support promoting the **right to education** protected in section 75 of the Constitution and **access to healthcare** protected in section 76 of the Constitution provided by non-state actors will also be affected, thereby affecting people's enjoyment of these rights. These provisions place an obligation on the State to take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of these rights, and not to take retrogressive measures. In this case, the State is taking measures that will negatively impact on the progressive realisation of socio-economic rights by non-state actors, in situations where the state is failing to fulfil its obligations. Many organisations currently operating as Trusts or Associations are the ones drilling boreholes, providing food aid in communities, and supporting access to education, access to justice and healthcare across the country.

1.1 Concern: The amendments introduce compulsory registration as PVOs of **all** organisations doing prescribed charitable activities defined in the PVO Act.⁸ The current Act exempts Trusts and *Common Law Universitas* from such registration.

⁸ Assisting people with material, mental, physical, or social needs; Providing charity to persons in distress; Supporting the destitute; Uplifting people's standard of living; Providing funds for legal aid; Preventing cruelty and promoting welfare of animals; Collecting contributions for these purposes; and: Any other charitable objects that may be prescribed in regulations.

1.1 Recommendation: Trusts registered under the Deeds Registries Act [*Chapter 20:05*] and *common law universitas* should still be allowed to exist and operate their mandates and remain exempted from registration as PVOs.

1.2 Concern: The amendments introduce a new section with stricter and more immediate requirements for *trusts, bodies, associations of persons corporate or unincorporate, and any institutions* that are not exempt under the Act that receive financial donations or collect contributions from the public to conduct prescribed charitable activities to be registered as PVOs, failing which anyone associated with the then unregistered organisation may be subjected to criminal sanctions as discussed below. A new provision states that no person is permitted to collect contributions from the public except in terms of the Act, thus outlawing crowdfunding (for charitable and relief causes), unless registered or temporary authority has been provided by the Registrar under the Act.

1.2 Recommendation:

Phrases such as “*legal persons*” and “*legal arrangements*” should be deleted from the Bill. These are not defined and they are too broad to restrict the entire non-profit sector (even common law *universitas*). This is different from the targeted approach envisaged in the FATF Recommendation 8 and Outcome 10.2 that the Bill seeks to operationalize.

1.3 Concern: The section introduces specific provisions for “*sanctionable trusts*” whom the Registrar suspects to be operating unlawfully to be dispatched with a written notice by the Registrar and requiring that the trust commence registration within 30 days, failing which the trustees are subject to criminal liability.

1.3 Recommendation: Registration modalities must be decentralised, so that applications can be lodged in the various provinces, to ensure that no locations are left behind, in line with the devolution principles in the Constitution of Zimbabwe.

1.4 Concern: There are no transitional provisions provided to protect an organisation’s status pending registration.

1.4 Recommendation: Registration delays may be used to frustrate organisations and their ability to operate. We propose that an application received by the Registry must be submitted to the PVO Board for determination within one month of receipt. The Board must consider the application within two months of receipt.

1.5 Concern: There are no time limits within which the Registrar must determine applications for PVO registration.

1.5 Recommendation: There should be clear timelines stipulated within which an application for registration as a PVO must be decided once lodged. Where no time stipulations are made and organisations wait indefinitely for the PVO Registry’s approval, amounts to denial of registration.

1.6. Concern: There are no clear registration requirements in the Bill or the current Act.

1.6. Recommendation: The Bill must clearly stipulate registration requirements.

2. Designation of organisations as “high risk”

2.1 Overall Concerns: The Bill gives the Minister wide discretionary powers to pass regulations designating by name, type, class, or characteristics, any legal person, legal arrangement, body or association of persons, or institution, otherwise exempted under the PVO Act, if the Minister believes that they are at high risk of or vulnerable to misuse for terrorism funding or causes. There are no guidelines as to what should guide this designation. The Minister has powers to

require such high risk or vulnerable organisations to register as PVOs under the Act and to prescribe additional or special requirements, obligations or measures that should apply to the said organizations. This provision gives the Minister extensive regulatory powers to unilaterally interfere with the internal day-to-day activities, affairs and operations of CSOs, placing them under strict monitoring and surveillance measures, without any judicial oversight. This will severely undermine their independence.

2.1 Recommendation: The powers of the Minister be modified and made reasonable.

2.2 Concern: The provision fails to clarify what constitutes being at high risk or vulnerable to terrorist activities and it does not specify the procedure the Minister will use to determine such risk or vulnerability. It is likely to be arbitrarily applied to NGOs working on issues of governance and human rights who receive foreign funding. The importance of fighting terrorism and related acts cannot be over-emphasised, but such should not be used as a scapegoat to silence dissenting voices. There is also no clarity on the additional or special requirements, obligations and measures that will be imposed against such designated organisations.

2.2 Recommendation: We propose that in determining which organizations are at high risk of or vulnerable to misuse by terrorist organizations, the Minister shall be guided by the risk-based approach; a targeted approach; ongoing outreach to the NGO sector.

2.3 Concern: This provision does not comply with the FATF Recommendation 8, which requires a country to conduct a targeted risk assessment to identify NGOs at risk. It is a violation of Article 22 of the International Covenant on Civil and Political Rights (ICCPR), and section 58 of the Constitution, protecting the **right to the freedom of association**. It also violates section 86 of the Constitution by **limiting rights without justification**. Such measures are not the least restrictive means to further a legitimate aim such as national security.

2.3 Recommendation: We propose proportionate risk-based monitoring and supervision mechanisms; effective investigation and information gathering; effective mechanisms for international cooperation and guidelines from the Financial Action Task Force and the Financial Intelligence Unit be adopted.

3. Re-registration due to “material change” in the organisation

3.1 Concern: The Bill introduces a provision which requires PVOs to apply to the Registrar for amendment of the particulars of registration if there are “material changes” that occur in the PVO concerned, within one month from when the material change occurred. “Material change” is defined as (a) any change in the constitution of the PVO upon the PVO’s termination for any reason concerning the disposal of its assets on the date of its termination; (b) any change in the management or ownership of the PVO; or (c) any variation of the capacity of the organisation to operate as a PVO. The Registrar may (a) approve the application; (b) reject the application and order the reversal of the material change that prompted the application within a specified period; or (c) reject the application for the amendment and order the applicant to re-register as a PVO.

3.1 Recommendation: Provisions relating to re-registration on account of “material change” in an organisation should be deleted. Guidance should be provided on what is deemed as “material change”, as interpretation of this clause may be open to abuse.

3.2 Concern: The requirement to apply for approval after minor organisational/ administrative changes, and the power of the Registrar to reject such changes, order their reversal and order re-registration, is an extremely worrying interference in the internal affairs of CSOs. The definition of “material change” is excessively broad, it includes insignificant changes that are not fundamental or material. CSOs undergo regular changes of personnel in management, meaning

that repeated arbitrary re-registrations may be required each time this occurs. The initial registration process is already long and arduous, and this will create yet another obstacle making it impossible for CSOs to comply in practice. The African Commission on Human and Peoples Rights' *Guidelines on Freedom of Association and Assembly in Africa* provide that organisations should not be required to register more than once.⁹

3.2 Recommendation: International best practice demands that associations are not required to obtain permission from authorities before revising their internal management structures or rules. PVOs should be able to make material changes as long as they will continue to fulfil their mandate and they will not be venturing into illegal activities. Provision should be made for a notification process that requires PVOs to simply notify the Registrar of any significant changes to their structure, in circumstances where the change undermines the PVO's ability to operate as a PVO as defined in the Act.

3.3 Concern: The requirement for application for approval, and potentially re-registration, of PVOs after any organisational changes such as a change in management personnel is intrusive. It is prone to abuse by the government to interfere with the internal management and governance matters of PVOs. It erodes the autonomy of PVOs by giving extensive powers to the Registrar (an employee of the Public Service that falls under Civil Service) to refuse registration to PVOs that work on sensitive issues. It punishes PVOs for revising their internal management structures without informing the Registrar. More so, given the power of the President over the Civil Service, any PVOs that are critical of the President or the ruling party cannot operate freely without fear of reprisals. This clause violates the **right to freedom of association** by empowering the Registrar to make reversals of decisions taken by PVOs in their internal operations, taking away the autonomy of PVOs to determine their own processes. The restriction on freedom of association does not seem to further any legitimate aim in terms of section 86 of the Constitution. It is unclear how deregistering an organisation by requiring re-registration upon a material change in a PVO would further national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. Requiring re-registration after such small changes is not the least restrictive way to further a legitimate aim. This is also a violation of the **right to administrative justice** under section 68 of the Constitution of Zimbabwe.

3.3 Recommendation: It is proposed that if there is a material change in terms of management, the PVO will notify the Registrar within 30 days, who shall acknowledge receipt, perform due diligence on the new proposed directors to determine if they qualify in terms of the law and if so, issue a letter of confirmation of the material change with 30 days of receipt of the notification. If they do not qualify, the Registrar will request the PVO to submit other directors who qualify under the law within 30 days and once satisfied, issue a confirmation letter of the material change. If the material change relate to change in scope, the Secretary of the PVO shall, within 60 days of the material change, apply to the Registrar in the prescribed form to amend the particulars of registration in relation to the PVO.

4. PVO Board and Registrar of NGOs

4.1 Overall concern: The Bill removes the PVO Board and instead designates the Registrar of PVO as the registration and regularity authority of PVOs. All decision-making powers is placed in the hands of the Registrar. The amendment will effectively transform the Registrar from an administrative official into an executive one, with extensive powers to receive, consider,

⁹ African Commission on Human and Peoples Rights, *Guidelines on Freedom of Association and Assembly in Africa* ("ACHPR Guidelines on FOAA"), para. 17, available at <http://www.achpr.org/instruments/freedom-association-assembly>.

determine, grant or reject applications for PVO registration. The Registrar will also be granted powers 'to promote and encourage coordination of PVOs with similar objects'. This will not only result in greater interference but will lead to effective capture of PVOs as they may be forced to work together with those that are deemed to be politically correct. The amendment does not stipulate the qualifications that should be possessed by the Registrar, or his or her appointment process. The Registrar is simply deemed to be the Director of Social Welfare, until another appointment is made. The Minister is granted the power to issue directives to the Registrar, which the Registrar is obliged to implement.

The fact that the Registrar has powers to promote and encourage coordination of PVOs with similar objects is a direct violation of the **right to freedom of association and assembly** protected under section 58 of the Constitution of Zimbabwe. Section 58(1) guarantees the right for every person to freedom of assembly and association, and the right not to assemble or associate with others. Section 58(2) states that no person may be compelled to belong to an association or to attend a meeting or gathering. The representatives of PVOs should be able to determine who they collaborate with to advance their mutual interests. The Registrar's excessive unilateral discretionary powers also violate PVOs' **right to administrative justice**, specifically to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair, as protected in section 68(1) of the Constitution.

4.1 Recommendations: The PVO Board must be maintained, and its composition must be revised to make it more inclusive and representative.

More members must be appointed by CSOs, not the one seat currently reserved for CSOs.

The Board must be reduced in size from 23 to 15 members as follows:

- a. six members (one representing each from Harare Metropolitan, Bulawayo Metropolitan, Mashonaland Provinces, Matabeleland Provinces, Manicaland Province and Midlands Province) appointed by the Minister from a list of 10 candidates nominated by the National Council of Private Voluntary Organizations established in terms of the Act;
- b. six members from PVOs representing youths, Persons with Disabilities, women, human rights, humanitarian and children groups appointed by the Minister from a list of 12 candidates nominated by the National Council of Private Voluntary Organizations established in terms of the Act;
- c. three members, appointed by the Minister from any government ministry by virtue of their knowledge or experience in development and welfare management representing the Government.

Other proposals relating to the Board are as follows:

Disqualification for appointment to Board - A person must be unqualified for appointment as a member of the Board if-

- he is declared bankrupt under the law in force in Zimbabwe;
- he is under any law in force in Zimbabwe, adjudged or otherwise declared to be of unsound mind;
- he has at any time been convicted of an offence involving theft, fraud, forgery, perjury or other dishonesty;
- in terms of the law in force in any country-
 - he has been adjudged or otherwise declared insolvent or bankrupt and

- has not been rehabilitated or discharged; or
- he has made an assignment to or composition with his or her creditors which has not been rescinded or set aside; or
- he would for any other reason be disqualified by law from serving as a director of a company or a trustee of a trust in Zimbabwe;

Term of office and conditions of service of members of Board - The term of office of a member of the Board shall be such period not exceeding three (3) years as the Minister may fix on his or her appointment, provided that the Minister shall ensure that at least 2 members who have held office in the Board continue for another term. A person should be eligible for reappointment for a further term. The conditions of service of a member of the Board, including allowances, shall be fixed by the Minister in consultation with the Minister responsible for finance, at the time of his or her appointment. For security of independence, the allowances payable to a member of the Board shall not be reduced during his tenure of office.

Procedure of Board - The Board shall meet at such dates, times and places as may be fixed by the chairperson, provided that the Board shall meet at least once every 3 months.

Engagement of consultants - The Board may, with the approval of the Minister, engage or retain the services of such professionals, consultants and experts as may be necessary for the proper and effective implementation of the provisions of this Act. The terms and conditions of service of a person engaged under this section shall be determined from time to time by the Minister with the approval of the Minister responsible for finance.

Invited persons - The Board may invite any person, based on his experience and expertise, to attend any meeting of the Board and take part in the deliberations of the Board but such person shall not be entitled to vote at that meeting.

Disclosure of interest - A member of the Board who has an interest directly or indirectly, in any matter to be considered by the Board shall, soon after the facts have come to the knowledge of the member, disclose this fact and the nature of the interest to the Board. After the disclosure, the member who has disclosed interest shall be excused from the meeting and shall not vote on the matter. The remaining members shall discuss the matter and determine whether the member must be precluded from participating further in the meeting concerned and the decision taken by the remaining members regarding the matter shall be recorded in the minutes of the meeting.

Powers of the Board - The Board shall have the powers akin to those of a body corporate so as to manage its affairs to fulfil the objectives of the Act. This includes to do anything which by the Act the Board is required or permitted to be done, and generally, to do all such things as are calculated to facilitate or are incidental or conducive to the performance of the functions of the Board in terms of this Act.

5. Excessive Ministerial Powers

5.1 Overall Concerns: The Bill affords the Minister the discretion to suspend the executive committee before getting judicial sanction, and to appoint provisional trustees to run the affairs of the organisation for up to 60 days pending the election of members of a new executive committee, on the basis of “information provided to him” that (a) the organisation is not operating in furtherance of the objects of its constitution; (b) maladministration of the

organisation; (c) involvement in any illegal activities; or (d) it is in the public interest to do so. The Ministers does this without judicial sanction and applies for judicial sanctions after the fact. The provisions states that even if the High Court subsequently refuses an application to appoint or confirm the appointment of provisional trustees, such refusal does not affect the validity of anything done by the provisional trustee in good faith before the date of such refusal. The Bill further provides that any provisional trustee appointed shall exercise all the functions of the executive committee of the organization, subject to any directions from the Minister. The Trustee may even acquire or dispose of funds or other assets of the organization but only with the approval of the Minister.

If the suspension has not been revoked by the Minister after 30 days, the suspended committee member's position is declared vacant and he/ she is disqualified for re-election unless the Minister removes the disqualification, or the High Court refuses to confirm the appointment of the provisional trustee.

The Bill also makes provision for provisional or final trustees, who are not full-time employees of the state, to be paid from the funds of the organization. The Minister determines the rate of the trustees' monthly salary.

In terms of the Bill, if an appointed trustee carries out an investigation and finds sufficient evidence on a balance of probabilities that there has been misappropriation of any funds or other assets of the organisation by an office-bearer or employee of the organisation, he may:

- a. Make an affidavit to that effect which includes the evidence, and
- b. Lodge an application to the High Court for an order directing the person to refund or return to such organization any funds or other assets which the respondent has misappropriated from such organisation.

"Misappropriate" in relation to the funds or other assets of the organization under trusteeship includes:

- a. Expending or disposing of the funds or other assets of the organization; or
- b. Withdrawing money from any account with any bank, building society or other financial institution operated on behalf of the organization.

These proposed provisions are unconstitutional. They violate the **right to freedom of association**. The Minister is given extensive arbitrary powers to interfere with the internal governance structure of PVOs by suspending and replacing a PVO's executive committee with provisional members on the basis of "information supplied to him" (the source or veracity of the information and standard of proof is not specified) on such vague grounds as "maladministration" and "in the public interest". The Bill fails to define what constitutes "information supplied to him". It is also not clear who supplies such information and the basis upon which such information is supplied.

The Minister can effectively appoint anyone to interfere in the running of an NGO on any flimsy information. This can potentially cause irreparable harm to the NGO's set programs, activities, and other legal obligations. The Supreme Court of Zimbabwe struck down a similar provision in the PVO Act in 1997 because the Minister's power to suspend executive members of an organization without providing them with a hearing violated the right to a fair hearing in the determination of a person's civil rights, protected under section 18(9) of the 1980 Constitution in the case of **Holland & Ors v Minister of the Public Service & Ors 1997 (1) ZLR 186 (S)**.

The Bill fails to specify the appointment criteria of such provisional trustees, and the qualifications and or experience they should have. Although the High Court can refuse an application to appoint or confirm trustees, by the time such application is determined, these trustees could have potentially caused irreparable harm to the PVOs.

The Minister usurps the right of PVOs to determine their internal management structures and rules by directing the provisional trustees to be paid by the funds of the organisation and granting them powers to make any decisions on behalf of the organisation - including disposal of assets, subject to the Minister's approval. The African Commission on Human and People's Rights' *Guidelines on Freedom of Association and Assembly in Africa* prohibits public authorities from interfering with associations' choices of managing officers unless such persons are barred by national law from holding the positions in question based on legitimate grounds as interpreted by regional and international human rights law.¹⁰ The grounds provided in the Bill for such interference by the Minister are vague and too broad. This is a violation of not only **freedom of association** but other rights such as the **right to administrative justice** under section 68 of the Constitution of Zimbabwe.

The trustees' affidavits on "misappropriation" may also be used as evidence to undermine the organisation. Further, it is not clear what area of expertise such a Trustee should have to be able to make such a determination. PVOs are already subjected to financial audits and other processes, based on their own rules or the rules of funding partners, where investigations are made on the abuse of resources, as well as anti-money laundering and other financial laws, and appropriate action can be taken in the event of misappropriation.

5.1 Recommendations:

- In the event that there is a justifiable need to appoint provisional trustees to a PVO this must be done after following due process, that includes after obtaining a court order, and the trustees must have appropriate qualifications.
- A PVO must only be put under a provisional trusteeship as a last resort, similar to the judicial management of private companies, when the structures of the PVO fail to deal effectively with any challenges.
- PVOs must be encouraged to carry out regular financial audits (at least once a year) based on international standards and best practices.
- Appointment of provisional trustees must be subjected to judicial review.
- Where there is maladministration, the Minister must make an application to the High Court for the appointment of one or more persons as trustees to run the affairs of the organization for a period not exceeding sixty days or until the maladministration has been dealt with. A provision a trustee should be someone who is qualified in terms of the Estate Administrators Act [*Chapter 27:20*] or who has the expertise to deal with the alleged maladministration. Where a Minister makes an application to the High Court, the Minister must highlight the exact nature of the maladministration committed and demonstrate on a balance of probability how the said maladministration has been committed.
- Where there are issues of concern that require investigation, the Minister must refer the matter to the Police, Reserve Bank or Financial Intelligence Unit to deal with in terms of the relevant laws depending on the nature of the illegal activities.

¹⁰ African Commission on Human and People's Rights, *Guidelines on Freedom of Association and Assembly in Africa* ("ACHPR Guidelines on FOAA"), para. 24, available at <http://www.achpr.org/instruments/freedom-association-assembly>

- Where the Minister appoints a trustee, the Minister must highlight the exact nature of the maladministration committed supported with evidence in the letter of appointment. The letter will also highlight the scope of the work to be done by the Trustee to deal with the alleged maladministration. The trustee(s) shall have the duties to (a) act in accordance with the objects of the trust; (b) provide security; (c) take possession of and where appropriate acquire ownership of the assets (d) act diligently in caring for trust assets (e) distribute the income and capital of the trust according to its objects; (f) act impartially; (g) disclose necessary information to beneficiaries; (h) act in the best interests of the beneficiaries; (i) comply with the law; (j) account for his actions; (k) not make a secret profit; (l) not commit a breach of trust; (n) be independent.
- At the conclusion of the assignment, the Trustee(s) shall compile a report that details how the alleged maladministration has been dealt with and accounting for how every resource of the Private Voluntary Organization has been used. The report shall be filed with the Master of the High Court, the Minister and the secretariat of the Private Voluntary Organization.

6. Establishment of a Private Voluntary Organisations Forum

6.1 Overall concerns: The Amendment Bill provides for an annual Private Voluntary Organisations Forum to be convened and hosted by the Registrar for the purpose of discussing issues concerning PVOs. The purpose of the Forum is unclear, but appears to be to gather information from PVOs, monitor them, and reach resolutions that will impact on the work of PVOs. As the Forum will be entirely controlled by the Registrar, it is a significant departure from CSOs' call for independence and self-regulation. The participants list and agenda that will be adopted for these Forums is unclear, simultaneously allowing for exclusion of important entities and inclusion of those that may be unnecessary in PVO affairs. The section on the Forum also appears to have been copied from the Gender Commission Act, the Gender Commission being an independent commission, without considering its suitability or necessity in the context of regulating PVOs.

6.1 Recommendation: The clause proposing the setting up of the Private Voluntary Organisations Forum must be removed and, in its place, consider **6.2. Recommendations** below.

6.2 Concerns: The Registrar of PVOs has power to determine who participates at this Annual Forum. As the criteria of selection of participants is not clearly spelt out this can lead to discrimination of some people working in certain PVOs in violation of 56(3) of the Constitution on the **right to equality and non-discrimination** that states that every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock. Due to polarisation in Zimbabwe, some staff members of PVOs may be discriminated against on grounds such as their perceived political affiliation, nationality, ethnicity, opinion, race and colour. Some members of PVOs may be invited to attend the Annual Forum and participate against their will as they fear victimization. This will violate section 58(2) of the Constitution that **guarantees the right to be able to decide who one associates or assembles with.**

6.2 Recommendations: We propose the recreation of an accountability and self-regulation mechanism for PVOs called the National Council of Private Voluntary Organizations. The Council shall be a collective forum of all registered Private Voluntary Organizations for purposes of co-ordination and networking of all Private Voluntary Organizations. The

Council shall nominate members from registered Private Voluntary Organizations for appointment by the Minister to the Private Voluntary Organizations Board. The Council shall adopt its own structure and develop and cause to be adopted a Constitution, a Code of Conduct and other by-laws which shall facilitate self-regulation of Private Voluntary Organizations.

7. Political support

7.1 Concern: The Bill prohibits PVOs from supporting or opposing any political party or candidate in a presidential, parliamentary or local government election through contribution of funds or otherwise. The clause reads as follows; “*when any private voluntary organisation that supports or opposes any political party or candidate in a presidential, parliamentary or local government election or is a party to any breach of section 7 under Part III of the Political Parties (Finance) Act [Chapter 2:12] as a contributor of funds to a political party or candidate or otherwise shall be guilty of an offence and liable to a fine of level twelve or to imprisonment for a period not exceeding one year, or both such fine or such imprisonment*” (our emphasis). The prohibition of any sort of “support” or “opposition” to any political party or candidate in a presidential, parliamentary or local government election by NGOs is vague and open to abuse. If this provision becomes law, it will violate the right to freedom of assembly, association and expression, as well as the right in section 67 of the Constitution on political rights. The “otherwise” is unnecessary, undefined and open to abuse, and the funding part is covered under the Political Parties (Finance) Act.

7.1 Recommendation: Zimbabwe’s Political Parties (Finance) Act already regulates political party financing. The provision is therefore unnecessary. Alternatively, the term “otherwise” must be clearly defined.

7.2 Concern: Further, non-state actors that support activities at Parliament and with government ministries may easily fall foul of this provision, as they may “oppose” a ruling party’s policies or governance practices, particularly if these include poor governance, rights violations and corruption– and “support” the goals and policies of an opposition political party that is pro-human rights and good governance. NGOs may be wrongfully targeted for legitimate advocacy work involving public scrutiny of government/ political leaders. Legal, medical and humanitarian organisations may also be targeted for providing not partisan “support” to opposition candidates in electoral challenges.

7.2 Recommendation: The provision for prohibition of “support” or “opposition” to political parties should be removed.

7.3 Concern: The African Commission on Human and People’s Rights’ *Guidelines on Freedom of Association and Assembly in Africa* require that associations be able to engage in the political, social and cultural life of their societies, and be involved in all matters pertaining to public policy and public affairs, including human rights, democratic governance, and economic affairs. The Special Rapporteur on the Right to Freedom of Association and Peaceful Assembly has also emphasised that CSOs have the right to freely participate in activities related to the electoral process, including advocating for electoral and broader policy reforms; discussing issues of public concern; contributing to public debate, monitoring and observation of electoral processes; initiating polls and surveys during the voting process; and engaging in voter education, among other activities.

7.3 Recommendation: The law should uphold Zimbabwe’s signatory of and commitments to regional and international human rights statutes.

7.4 Concern: The provision conflicts with the **right to freedom of association** under section 58 of the Constitution, Article 22 of the International Covenant on Civil and Political Rights (ICCPR), Art. 20 of the Universal Declaration of Human Rights and Art. 10 of the African Charter. It fails the limitation test in both Article 19(3) of the ICCPR and section 86 of the Constitution of Zimbabwe, which requires only permissible, justifiable, necessary and proportionate restrictions on this right.

7.4 Recommendations: The law may regulate campaigning or financing campaigns. It should not be so broad as to outlaw activities that facilitate the exercise of human rights and fundamental freedoms of any person.

7.5 Concern: The imposition of harsh penalties such as imprisonment for violation of this provision without any justification or regard to civil remedies or administrative fines is arbitrary and criminalises CSOs for doing their work.

7.5 Recommendation: Any and all penalties should be reasonable rather than punitive.

8. New Principles governing PVOs

8.1 Concern: The Bill introduces principles that require PVOs to ascertain the identity of donors and sources of donations; to refuse and report any donations from “illegitimate” or “immoral” sources.

8.1 Recommendation: No definition is provided for immoral and illegitimate. The principle should be removed. Alternatively, what is immoral and illegitimate must be specified.

8.2 Concern: Non-discrimination and political affiliation: There are a number of non-discrimination principles, but the main focus is for PVOs not to “conduct themselves in a politically partisan manner” and not to use “resources to benefit members of a particular affiliation or making any test of the political allegiance of its beneficiaries”.

8.2 Recommendation: Organisations supporting victims of rights violations who belong to a particular political party may be deemed to be “politically partisan”. These provisions violate the **right to equality and non-discrimination** under section 56(3) of the Constitution and will be tantamount to discrimination on the basis of political affiliation. The proposed provisions also violate section 67 of the Constitution which protects **political rights** to participate in peaceful political activity; and in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause. The provisions also violate the **right to freedom of conscience** 60(1)(b) which states that every person has the freedom to practise and propagate and give expression to their thought, opinion, religion or belief, whether in public or in private and whether alone or together with others. These provisions should be deleted.

8.3 Concern: PVOs are required to be sensitive to the “cultural values and norms” of the community in which they operate; These are pedantic, undefined and will therefore be applied subjectively and to economically and socially benefit the community in which they operate. Certain organisations, for examples those that distribute condoms in the fight against HIV and AIDS, may end up unable to do their work.

8.3 Recommendation: While these principles claim to be promoting non-discrimination, they lack legal certainty and can be applied in a discriminatory manner. This violates the **right to equality and non-discrimination** protected under section 56 and the **right to administrative justice** and fairness protected under section 68. Organisations and funders supporting socially marginalized groups, as well as organisations advocating for sexual, reproductive and health rights such as the right to abortion, may be deemed to be “immoral” or acting against the “cultural values and norms” of a community; These provisions must be deleted.

8.4 Concern: The principles call for PVOs to prioritise employment of Zimbabwean citizens or permanent residents.

8.4 Recommendation: Zimbabweans are entitled to dual citizenship. This may result in discrimination against Zimbabweans of multiple citizenship who may be deemed to be foreign workers, and to implement fair and safe labour practices. The principles discriminate against foreigners and should not be adopted. The principle requiring prioritization of citizens or permanent residents violates the **right to equality and non-discrimination** for foreign nationals, as guaranteed in section 56(3) of the Constitution as this will result in discrimination on basis of nationality, and potentially violates section 64 on **freedom of profession, trade or occupation**.

9. Transitional mechanisms

Overall concern: The Bill does not provide transitional mechanisms for organisations to bring themselves into compliance with the new law. This is a cause for concern.

Recommendation: A period of no less than 6 months must be designated for CSOs to comply with the new law, provided the registration authority may extend the period upon application by a Private Voluntary Organization. Organisations currently operational must be deemed to be registered if they send to the registration authority, a notice declaring their intent to be added to the PVO Register. An interim registration certificate must be issued.¹¹ Alternatively, those currently operating as Trusts and Common Law Universitas, must be allowed to keep operating pending determination if they lodge applications. Lodging applications should allow continuance of operation, until such a time when a determination is made as to their applications to register as PVOs. An interim registration certificate must be issued until such a time when determination is made.

For those organisations designated as “sanctionable trusts”, there must be transitional provisions to allow them an opportunity to comply. A period of no less than 6 months must be given for them to comply. Once they lodge applications for registration as PVOs, they must be allowed to continue operating until determination of their applications. Currently, the Bill provides for 30-day notice period which the Register of PVO must give to them to wind down.

10. Grievance and complaints procedure

Recommendation: We propose the establishment of a grievance and complaints mechanism that allows CSOs to lodge complaints and concerns regarding challenges they face when operating. This would also deal with, among other things, the unlawful demands by local authorities of MOUs, payments and related clearances. A grievance committee or authority must be set up, with representatives from both government and CSOs.

11. Severe criminal and civil penalties for vaguely defined offences

¹¹ This is in line with best practice that newly adopted laws should not require previously lawful organizations to re-register, as existing organizations may face arbitrary rejection or delays of registration that hinder their activities (United Nations Special Rapporteur on the right to freedom of peaceful assembly and of association, Maina Kiai in U.N.DOC A/HRC/20/27 (2012), at para. 62.)

The new amendments introduce additional, excessively punitive, criminal and civil penalties for non-complying PVOs, as well as individual liability for trustees, employees and managers of PVOs, and anyone involved in the control of a PVO, as well as members of the public.

Overall concerns:

Sections 6(4)-(5) provide for individual criminal liability for anyone involved in the management or control of an unregistered PVO, with a fine of up to level 12 and imprisonment of up to one year.

Section 6(7) imposes criminal liability on trustees of “sanctionable trusts”, suspected to be operating unlawfully, who fail to register after receiving a notice from the Registrar, with a fine of up to level 10 and imprisonment of up to six months. The new section 6(9) also departs from established doctrine of common purpose by allowing for joint criminalisation of both a trust and its trustees.

Section 6(3) also criminalises members of the public for fundraising/crowdfunding without authorisation of the Registrar in terms of the Act, allowing for the imposition of a fine and imprisonment of up to one year.

CSO activities considered to be “political”, are still criminalised under Clause 9B, new section 23, namely “support[ing] or oppos[ing] any political party or candidate in a presidential, parliamentary or local government election”; violating Part III of the Political Parties (Finance) Act “as a contributor of funds to a political party or candidate or otherwise”; or “wilfully deny[ing] any beneficiary assistance in furtherance of its charitable objects solely on the basis of that beneficiary’s political affiliation, or wilfully makes such assistance conditional upon that beneficiary’s political affiliation”. “Supporting” or “opposing” a political party or candidate remains undefined. A fine of up to level 12 and imprisonment of up to one year may be imposed for this offence.

The Bill also introduces extensive new provisions for the imposition of civil penalty orders for non-compliance with the Act. PVOs are guilty of “civil default” on such vague grounds as receiving any donation from an “illegitimate” or “immoral” source.

The Bill also allows the Minister to impose new regulations with penalties for failure to disclose sources of foreign funding, and to impose increased monitoring and supervision measures for PVOs found to be at “high risk” (presumably of money laundering and terrorism funding abuses).

Of particular concern is the over-penalisation of PVOs and their trustees, managers and employees. Contrary to CSOs’ calls for non-criminalisation for administrative offences, penalty levels have been increased, and new offences introduced. The Bill specifically allows for people to be subjected to multiple civil and criminal penalties for the same administrative offence. There is no uniformity in terms of civil penalties, with some provisions maintaining fines at prescribed levels whilst a “civil default” for the same offence can result in payment of up to USD 9000 despite clear regulations in law that the economy is not dollarised. CSOs are concerned with the over-penalisation of PVOs and their trustees, managers and employees. Contrary to CSOs’ calls for non-criminalisation for administrative offences, penalty levels have been increased, and new offences introduced.

The imposition of such harsh penalties for administrative offences and charitable activities conducted in good faith for the benefit of humanity are a violation of the **right to freedom of**

association and association guaranteed in section 58(1) and (2) of the Constitution. The proposed provisions also violate the **right to administrative justice**, section 68 of the Constitution. The fact that multiple penalties can be imposed by the Registrar for the same offence violates the right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair as provided in section 68(1) of the Constitution. Automatic findings of civil liability before a party is afforded a hearing and a chance to make submissions also violate the laws of natural justice and due process as required under section 68 of the Constitution on the **right to administrative justice**. The imposition of penalties without trial or hearing also violates the **right to a fair hearing** protected under section 69 of the Constitution. The prohibition of supporting or opposing any political party or candidate violates **political rights** protected under section 67 of the Constitution to participate in peaceful political activity; and in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause.

Recommendation: The above criminal and civil penalties must be removed.

12. Appeals procedure and violation of fundamental tenets of administrative justice

Overall concerns: The amendments violate the **right to administrative justice** provided in section 68 of the Constitution as follows:

The amendments have provisions allowing for the Minister to unilaterally and on a discretionary basis, designate organisations as being at “high risk” of money laundering and counter-terrorism abuses and impose specific measures on them, with appeals to the High Court only allowed on procedural grounds and no rights for the High Court to overturn the decision, only to refer it back to the Minister.

This effectively ousts the jurisdiction of the courts, especially to reach a determination on the violation of rights, contrary to section 69 of the Constitution on the **right to a fair hearing** and section 85 of the Constitution on the **right to enforcement of fundamental human rights and freedoms** and to appropriate relief.

Section 69(1) of the Constitution specifically states that every person accused of an offence has the right to a fair and public trial within a reasonable time before an independent and impartial court.

Section 69(2) of the Constitution also provides that in the determination of civil rights and obligations, every person has a right to a fair, speedy and public hearing within a reasonable time before an independent and impartial court, tribunal or other forum established by law. Section 69(3) also provides that every person has **the right of access to the courts, or to some other tribunal or forum established by law for the resolution of any dispute**. The amendments have also maintained the Minister’s powers to unilaterally and arbitrarily suspend executive committees of organisations, and impose provisional trustees with extensive powers, with the High Court only reviewing the suspension and appointments after they have been imposed.

These unilateral Ministerial powers violate the section 69 **right to a fair hearing**, as well as section 85 of the Constitution on the **right to enforcement of fundamental human rights and freedoms**, as above.

Section 85(1) provides that (a) any person acting in their own interests; (c) any person acting as a member, or in the interests, of a group or class of persons; and (e) any association acting in the interests of its members; is entitled to approach a court, alleging that a fundamental right or freedom enshrined in this Chapter has been, is being or is likely to be infringed, and the court may grant appropriate relief, including a declaration of rights and an award of compensation. While the amendments have introduced the right to appeal a decision of the Registrar, in relation to applications for registration, deregistration and amendments of certificates, appeals are only to the Minister, not to a court of law, and the Minister has no powers to overturn decisions, only to refer decisions back to the same Registrar for reconsideration. This violates the section 69 **right to a fair hearing** and the section 85(1) **right to enforcement of fundamental human rights and freedoms** as highlighted above.

Recommendations:

While the amendments have introduced the right to appeal a decision of the Registrar, in relation to applications for registration, deregistration and amendments of certificates, appeals are only to the Minister, not to a court of law, and the Minister has no powers to overturn decisions, only to refer decisions back to the same Registrar for reconsideration. This violates the section 69 **right to a fair hearing** and the section 85(1) **right to enforcement of fundamental human rights and freedoms** as highlighted above. The amendments do not provide for specific timeframes of appeals or for suspension of the Registrar or Minister's decisions pending appeals. This lays ground for potential violation of section 68 of the Constitution on the **right to administrative justice** which, among others, requires that administrative conduct be prompt and efficient, and the **right to a fair hearing** within a reasonable time, protected in section 69. The Minister must be granted the powers to make a determination of an appeal – and not to simply send back an issue to the Registrar or the registration authority for destination.

The new Civil Penalty Orders Schedule also provides limited opportunities to challenge orders issued. Those served with an order only have 48 hours to prove to an undesignated officer that the order should not have been made, and after 48 hours may be granted a right to a hearing, again before an unspecified designated officer. Undesignated officers are thus given powers to preside and determine reviews and hearings on civil penalties without judicial involvement. The lack of court oversight provisions amounts to a gross violation of the **right to fair trial** as provided in section 69 of the Constitution and the **right to administrative justice** provided in section 68 of the Constitution. The Minister must be required to issue a decision on the appeal within thirty days from the date of such appeal;

Any organization aggrieved by the decision of the Minister must be able to, within twenty-eight days of receiving the written decision of the Minister, apply for review by the Administrative Court. That the Administrative Court may give such direction and order as it deems fit.

F. CONCLUSION

Several provisions of the PVO Amendment Bill violate provisions of international law codified in conventions and treaties to which Zimbabwe is a state party and has domesticated in Chapter 4 of the Constitution for them to be applicable in Zimbabwe as required by section 327 of the Constitution. The conventions and treaties include the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples' Rights (ACHPR). These

instruments guarantee the rights to freedoms of association, equality and non-discrimination and progressive realization of socio-economic rights. Similarly, many provisions violate the Constitution of Zimbabwe (2013). The Constitution is the supreme law of the country (section 2 of the Constitution).

The foregoing was made apparent to the government on 17 December 2021 by four UN Special Rapporteurs¹² wrote to the President expressing concerns that the Bill violates international human rights standards, notably freedom of association. Their letter noted that the vagueness of several clauses in the Bill projects uncertainty on the scope of the law, making it difficult for organisations to clearly ascertain their legal obligations and act accordingly, and provides an opportunity for broad detrimental interpretation of clauses by relevant administrative and judicial bodies. A follow-up communication was made in February 2023 by the four UN Special Rapporteurs reminding the President of their concerns, and raising concern that none of their recommendations were taken on board.

The proposed Bill will have dire consequences for civic space and access to humanitarian support and other social services that CSOs render in Zimbabwe.

In its current form, the Bill cannot pass constitutional scrutiny, and does not accord to the tenets of open and democratic governance as well as good economic and social governance.

¹² These are the *Special Rapporteur on the rights to freedom of assembly and association*; the *Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression*; the *Special Rapporteur on the situation of Human Rights Defenders* and the *Special Rapporteur on the fundamental freedoms while countering terrorism*.

ANNEXURE I

BACKGROUND AND CONTEXT OF PREVIOUS SUBMISSIONS TO GOVERNMENT

Since the Private Voluntary Organisations (PVO) Amendment Bill H.B. 10 of 2021 was gazetted on 5 November 2021, we have sought audience with government to dialogue about and express the concerns we outline here.

- i. On 16 March 2022, we met with representatives of the Reserve Bank of Zimbabwe (RBZ) Financial Intelligence Unit (FIU).
- ii. In March 2022, we met with representatives of the Ministry of Public Service, Labour and Social Welfare.
- iii. We have petitioned the Honourable Speaker of the National Assembly twice.
- iv. We have met with the Parliamentary Portfolio Committee on Public Service, Labour and Social Welfare twice. First in December 2021 and secondly in March 2022.
- v. On 11 April 2022, we interfaced with the Honourable Minister of Justice, Legal and Parliamentary Affairs and the Deputy Attorney General. In addition, we have made several written submissions to both offices.
- vi. We made submissions at the public hearings convened over the Bill as required under section 141 of the Constitution of Zimbabwe.
- vii. Regrettably, our humble submissions have not been included in the current Bill.

At the meeting of 11 April 2022, the Honourable Minister of Justice, Legal and Parliamentary Affairs kindly agreed to introduce various amendments to the Bill, which include the following:

- a. Introducing transitional provisions granting CSOs a minimum of six months to regularize their registration under the amended Act;
- b. The above provision applies to those CSOs that are currently operating lawfully, but are not registered as PVOs;
- c. Reviewing the composition of the PVO Board to a manageable number;
- d. Reviewing the composition of the PVO Board to a demographic group that is more representative of PVOs;
- e. Reviewing penal provisions; and,
- f. Reducing penal provisions.

We have additionally made written submissions to the Honourable Minister of Justice, proposing alternative text to the Bill, as had been requested of us in the meeting. Regrettably, our proposals remain unconsidered.

On 12 April 2022, the Honourable Minister of Justice, Legal and Parliamentary Affairs reported back to the National Assembly. He confirmed that:

- i. He had consulted with CSOs;
- ii. The relevant authorities were willing to seriously consider suggestions to improve the composition of the PVO Board to ensure a fair representation of a cross-section of PVOs and CSOs;
- iii. He had agreed to consider amendments to the Bill to refine the Minister's powers to intervene in the operations of PVOs in a manner consistent with constitutional rights, especially the freedom of association;

- iv. He had agreed to reform provisions criminalizing the politicization of charitable activities, so that PVOs do not operate in fear of being subjected to criminal prosecution.

We are, however, concerned that none of the above concessions have been included in the current Bill.

The Public Hearings Report of the Parliamentary Portfolio Committee on Public Service, Labour and Social Welfare notes that:

- i. Stakeholders emphasized the need to ensure that the powers of the Registrar do not erode the powers of the PVO Board.
- ii. The majority of PVO Board members should be appointed by PVOs themselves.¹³

Regrettably, these submissions from the public were also not taken into account.

We are concerned that on 7 June 2022, the Honourable Minister of Public Service, Labour and Social Welfare submitted to Parliament, significant amendments to the initial Bill that was gazetted on 5 November 2021. The amendments alter materially the PVO Amendment Bill that was gazetted on 5 November 2021.

The National Assembly in Parliament adopted these amendments on 26 July 2022, with little to no debate. The new clauses did not address any of the concerns raised by civil society, or by the UN Special Rapporteurs. On the contrary, the revisions introduced even more restrictive provisions. Those provisions do not align with the Constitution,

On 27 July 2022, we addressed a letter to the Honourable Speaker of the National Assembly, outlining our concerns with the new version of the Bill.

¹³ As noted in the 11 May 2022 edition of the Hansard of the National Assembly, page 4989.

ANNEXURE II

SUMMARY OF CSO REPORT ON ECONOMIC IMPLICATIONS OF THE PVO AMENDMENT BILL

The full report is hyperlinked here for ease of reference:

<https://kubatana.net/wp-content/uploads/2022/03/Research-Report-Punching-holes-into-a-fragile-economy-Possible-economic-impact-of-PVO-Amendment-Bill.pdf>

The report makes the following key findings, pertinent to the present conversations:

Role of NGOs:

1. Non-Governmental Organisations (NGOs) are playing an increasingly important role as agents of development. Effective partnerships between governments and NGOs are recognised as being crucial in accelerating sustainable development. The role of NGOs is even more important in Low-Income Countries (LICs) where the fiscal space is limited. Creating an enabling environment for NGOs to operate is recognised as being critical for the attainment of the Agenda 2030 on Sustainable Development Goals (SDGs) and the African Union (AU) Agenda 2063: The Africa We Want.
2. In Zimbabwe, NGOs have been important drivers of sustainable development through a number of channels which include: employment creation, contribution to tax revenues, foreign currency receipts, provision of social protection and humanitarian assistance, growth in the local tourism sector and overall economic growth and development. Owing to the huge financing gap in productivity-enhancing and poverty reducing sectors of the economy such as health, education, social protection, water and sanitation, the country has had to rely on donor financing from international NGOs and development partners. Sustained and strong partnerships with NGOs and other not-for-profit organisations such as trade unions will strengthen the implementation of the National Development Strategy 1 (NDS 1) as well as the attainment of the country's Vision 2030: Towards a Prosperous & Empowered Upper Middle-Income Society by 2030.

Financial contribution of NGOS:

3. According to the 2022 Monetary Policy Statement, NGOs are the third biggest earners of foreign currency in the country after export proceeds and diaspora remittances. Total foreign currency receipts (US\$ million) from NGOs rose by 50.5% from US\$647.78 million in 2020 to US\$975.16 million in 2021. This foreign currency is critical in sustaining the foreign currency auction system. Any disruptions in the activities of NGOs through legal and/or non-legal means could result in the country losing out massively.

Employment contribution:

4. According to the 2019 Labour Force and Child Labour Survey (LFCLS) from the Zimbabwe National Statistics Agency (ZIMSTAT), the NGOs sector employ 1.2% of the total employed

which translates to an aggregate figure of 17,643 formal jobs. This translates to thousands of livelihoods that are being sustained through these jobs. To put into context, according to the 2019 Labour Force and Child Labour Survey, the share of informal employment to total employment is estimated at 75.6% in 2019.

Contribution to business:

5. Moreover, according to the 2020 Integrated Annual Report by African Sun Limited, one of the country's biggest hospitality groups, conferencing business from NGOs have consistently anchored their city and country hotels segment. This segment was their cash cow in 2020 as the impact of the COVID-19 on the Hotels and Tourism sector saw other segments, particularly the Resort Hotels and Leisure Division, plummeting in sales. International room nights declined by 78%, while local room nights decreased by only 28% from 2019 as NGOs, Government and Quasi-governmental organisations continued to operate albeit under restricted conditions.

Contribution to tax revenue:

6. According to information from the Zimbabwe Revenue Authority (ZIMRA), the contribution by NGOs to tax revenues in Zimbabwe ranges from US\$4,000 to US\$35,000 per month depending on the size of the NGO. This is quite significant and has provided the Government with requisite resources to finance development.

Bridging the huge financing gap in poverty-reducing sectors:

7. NGOs have also played a critical role in bridging the huge financing gap in the critical sectors of the economy such as social protection, education, health, water and sanitation among others. 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. A further US\$202.4 million in development assistance is projected during the fourth quarter of 2021, giving cumulative receipts of US\$850.2 million for the year. In 2022, support from the Development Partners is projected at US\$761.5 million, broken down as, US\$274.3 million and US\$487.2 million from multilateral and bilateral partners, respectively. Importantly, a lot of the gains that have been registered key health and social indicators have been on account of the partnership between the Government and NGOs.
8. In general, coverage of social assistance programs in Zimbabwe has been low and inadequate, and in fact declined since the start of the COVID-19 pandemic. According to the 2022 National Budget, Zimbabwe received an estimated US\$130 million in humanitarian assistance in 2021. NGOs have also been playing a critical role in terms of the provision of Water, Sanitation and Hygiene (WASH) services across the country which could be threatened if the activities of NGOs are disrupted. According to the 2022 National Budget Statement, Zimbabwe received an estimated US\$13 million towards water and sanitation in 2021.

Development indicators and impact of disruption of NGO work:

9. Importantly, a lot of development indicators have been on account of the partnership between the Government and NGOs. For instance, the country has made some progress in terms of reducing mortality. According to the 2019 Multiple Indicator Cluster Survey (MICS), the maternal mortality ratio declined from 651 in 2015 to 525 in 2017 and then 462 in 2019. According to the 2020 Zimbabwe Progress Report on SDGs, progress has been made with regards to HIV infection, with the number of new HIV infections reducing from 3.9 per 1,000 uninfected population in 2015 to 2.8 per 1,000 in 2019. The malaria incidence per 1,000 population has progressively declined from 29 in 2014; to 14 in 2016; 10 in 2017; and only 5 in 2018. TB incidence has climbed down to 210 per 100,000 population in 2018, from 278 per 100,000 population in 2014.
10. International experience from 134 countries, show that bilateral (official) aid flows dropped by 32% in the years after aid-recipient governments introduced new restrictions on NGOs, largely because donors could no longer fund preferred activities. As many NGOs implement social protection and other anti-poverty interventions, reductions in foreign aid have implied cuts to critical productivity-enhancing services for the indigent and vulnerable. In other studies there is even a greater impact on aid flows, with 45% less foreign aid channelled towards countries that restrict CSOs' ability to engage in advocacy. Zimbabwe is not likely to be an exception.
11. No NGOs in Zimbabwe have been implicated in money laundering and terrorist financing. NGOs have not been identified as a risky sector. On the other hand, the overall terrorism and terrorist financing threat in Zimbabwe is rated low.
12. Within this context, any disruptions in NGO activities and financing in Zimbabwe will likely worsen the poverty situation and threaten the development gains that have been made to date. Importantly, in Zimbabwe there has been no instance of terrorist financing in the NGOs sector. In line with regional and international best practices, any anti-money laundering and counter-terrorism financing measures and regulations should be designed and implemented on the basis of a national NGO sector risk assessment. No additional regulations should be applied if existing legislation and/ or other measures are sufficient to mitigate risks. FAFT's Recommendation 8, which calls for a review of the laws and regulations governing non-profit organizations to ensure that they cannot be used to finance terrorists, is meant to apply solely to those NGOs that are most vulnerable to terrorist financing abuse.
13. In a number of countries such as Kenya and Ethiopia, they are adopting more liberal laws allowing NGOs more scope for activities.¹⁴ Adding more regulations to the NGOs sector will cause a number of NGOs to go underground which will increase the risk of fraud and money laundering that Government is trying to deal with. The country's current regulations and laws are robust enough to deal with any threat of fraud or money laundering by NGOs which threat remains very insignificant. Importantly, creating an enabling environment for NGOs to operate is critical in the attainment of the country's Vision 2030.

END

¹⁴ Kelly, L. (2019). Legislation on Non-Governmental Organisations (NGOs) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda and England and Wales. K4D Helpdesk Report, 21 August 2019.