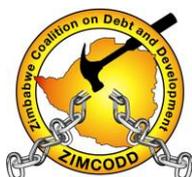


## The Private Voluntary Organizations Amendment Bill and Shrinking Civic Space in Zimbabwe

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## 1. Introduction

The February Policy Digest seeks to decipher the Private Voluntary Organisations (PVO) Amendment Bill and ascertain its effect on governance and democratic processes particularly matters of civic space in Zimbabwe. The digest makes an assessment on whether the bill enhances or suffocates the independence of Civil Society Organisations (CSOs) in fulfilling their diverse mandates in Zimbabwe, constrict or expand civic space and its alignment or lack thereof to the Constitution particularly Chapter 2 (8) (1) which states “*guide the State and all institutions and agencies of government at every level in formulating and implementing laws and policy decisions that will lead to the establishment, enhancement and promotion of a sustainable, just, free and democratic society in which people enjoy prosperous, happy and fulfilling lives*”. To this end, an examination of the PVO Amendment Bill raises several questions and calls for further reflection on constitutionalism; anti-terrorism and money laundering; democratisation; promotion and protection of human rights.

## 2. The Nature of Civic Space in Africa

### a. Central Africa (Cameroon)

Civic space in Central Africa continues to shrink with entrenched totalitarianism coupled with weak rule of law, armed conflict and impunity being leading dynamics in militating against civic space<sup>1</sup>. A good example is that of Cameroon where the operations of CSOs have remained severely restricted due to repressive laws as well as conflicts between armed separatist groups and the military. CSOs that were engaged in humanitarian activities in 2020 were banned and threatened by the Minister of Territorial Administration accusing them of supporting opposition leader Maurice Kamto and destabilising the country<sup>2</sup>. Such inflammatory remarks are detrimental to civic space and threatens the very foundation which democracy flourishes on.

### b. West Africa (Nigeria)

In Nigeria, the constitution is the supreme law of the land. It is alleged that, CSOs in Nigeria are registered or incorporated under the Companies and Allied Matters Act (CAMA Act) of 1990. However, the independence of CSOs remains questionable as the organizations’ “*right to exist can be denied or revoked for political reasons, national security reasons, as well as any other unspecified reason decided by the President or other regulating body, or as stipulated in the CAMA Act*”<sup>3</sup>. This was substantiated by the acts of President Goodluck Jonathan who, in 2014, enacted the Same Sex Marriage Prohibition (SSMP) Act, which he used to ban CSOs affiliated with same-sex marriages, civil unions, or homosexual relations. The Foreign Contributions Regulation Act which imposes several restrictions on the ability of organizations to operate independently and receiving contributions from foreign sources is another legal framework that can be easily abused to target CSOs that speak against political repression in Nigeria.

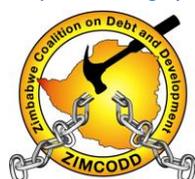
There are over 54 000 CSOs in Nigeria, excluding over 500 which have gone under extensive surveillance by the state. Majority of those that have been put under the state radar are from the Northern,<sup>4</sup> a Muslim dominated area whilst those from the Southern part of Nigeria seem to be operating freely. Southern CSOs have greater autonomy, and they engage in political activities that might be banned in the North, such as fighting for human rights and civil

<sup>1</sup> <https://findings2020.monitor.civicus.org/africa.html>

<sup>2</sup> <https://findings2020.monitor.civicus.org/africa.html>

<sup>3</sup> Companies and Allied Matters Act (CAMA Act) of 1990

<sup>4</sup> [https://www.degruyter.com/document/doi/10.1515/npf-2015-0051/html#j\\_npf-2015-0051\\_ref\\_083\\_w2aab3b7c15b1b6b1ab2ac83Aa](https://www.degruyter.com/document/doi/10.1515/npf-2015-0051/html#j_npf-2015-0051_ref_083_w2aab3b7c15b1b6b1ab2ac83Aa)



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liberties,<sup>5</sup> a norm that has been in existence since late 1990s. This explains why there are fewer human rights organizations registered in the Northern region as compared to the Southern region<sup>6</sup>. This is mainly because of political instability which had its roots in the 1910s when approximately 300 tribes were coercively amalgamated into one entity. This became the seed of lasting mistrust, suspicion, apprehension and antagonism among these indigenous ethnic groups and politicians. Politics of ethnicity has also been used as a tool of repression for CSOs that are associated with a tribe that is not in power<sup>7</sup>. Although there are many registered CSOs in Nigeria, the government has always treated them with suspicion and mistrust.

### c. SADC Region

**Closed:** There was complete closure - in law and in practice - of civic space in the Democratic Republic of Congo (DRC) prior to the reign of President Tshisekedi<sup>8</sup>. Improvements have since been made to open democratic space. Prior to his presidency, it was alleged that powerful non-state actors were constantly arrested, brutalised and killed with impunity for attempting to exercise their rights to associate, peacefully assemble and express themselves.

**Suppressed:** In nations such as Angola, Eswatini and Zimbabwe there is a “sophisticated” repressive machinery that has been put in place to destabilise CSOs. A repressed civic space means that, CSOs are heavily monitored with members risking intimidation, death, surveillance, harassment, intimidation, imprisonment, and injury. The space is characterised by infiltration, constant threats of de-registration and closure by the authorities. A typical threat usually given by the Zimbabwean government to threaten CSOs<sup>9</sup>.

**Obstructed:** A combination of regulatory and legal restraints is used by the state to interrupt the work of CSOs in Tanzania, Malawi, Zambia and Lesotho. In these nations, the operations of CSOs are considered threat to the power of the incumbent. Therefore, illegal surveillance, bureaucratic harassment and demeaning public statements are constantly used to demoralise CSOs<sup>10</sup>.

### 3. The Amendment Bill: Is the Government Sincere in Wanting to Regulate PVOs?

Is the government sincere when it says it wants to regulate PVOs or there is an ulterior motive behind the Bill? If there is an ulterior motive, what could it be? These are some of the questions that most citizens are grappling with.

As the nation heads for the 2023 elections, fears of the growing influence of CSOs have been reflected through a repressive PVO Amendment Bill approved by the Cabinet in September 2021. The Bill is an attempt to shrink civic space. It places significant limitations on CSO driven social audits and accountability initiatives. In this regard, it violates the concept of social contract by which the modern-day state is premised on as it is embedded with clauses that seek to further an undemocratic agenda by interfering with the operations of PVOs. This is because, the Zimbabwean civil society functions as a hub and gateway for democratic engagements, transparency and accountability in a quasi-totalitarianism environment. It is

<sup>5</sup> [https://www.degruyter.com/document/doi/10.1515/npf-2015-0051/html#j\\_npf-2015-0051\\_ref\\_083\\_w2aab3b7c15b1b6b1ab2ac83Aa](https://www.degruyter.com/document/doi/10.1515/npf-2015-0051/html#j_npf-2015-0051_ref_083_w2aab3b7c15b1b6b1ab2ac83Aa)

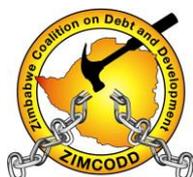
<sup>6</sup> [https://www.degruyter.com/document/doi/10.1515/npf-2015-0051/html#j\\_npf-2015-0051\\_ref\\_063\\_w2aab3b7c15b1b6b1ab2ac63Aa](https://www.degruyter.com/document/doi/10.1515/npf-2015-0051/html#j_npf-2015-0051_ref_063_w2aab3b7c15b1b6b1ab2ac63Aa)

<sup>7</sup> [https://www.degruyter.com/document/doi/10.1515/npf-2015-0051/html#j\\_npf-2015-0051\\_ref\\_083\\_w2aab3b7c15b1b6b1ab2ac83Aa](https://www.degruyter.com/document/doi/10.1515/npf-2015-0051/html#j_npf-2015-0051_ref_083_w2aab3b7c15b1b6b1ab2ac83Aa)

<sup>8</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/11/SALC-Closing-Civic-Spaces-Report-FINAL-lo-res.pdf>

<sup>9</sup> <https://www.newzimbabwe.com/mnangagwa-government-shuts-down-ngos/>

<sup>10</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/11/SALC-Closing-Civic-Spaces-Report-FINAL-lo-res.pdf>



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critical in amplifying the voice of the masses in their quest for social and economic justice. CSOs in Zimbabwe have a mammoth task calibrated to ensure a better and democratic nation. The success of the civil society in Zimbabwe is a threat to the government as it enables people to measure its governance policies<sup>11</sup> and successes vis-à-vis its promises and constitutional mandate of creating a just and effective community anchored on rule of law and viable public service delivery. Thus, civil society is enabling communities to measure and determine if the government is fulfilling its constitutional obligation which automatically becomes a threat if it is not already.

The economic impact of the Bill also makes one question the sincerity of the government when it says it wants to regulate the operations of PVOs. This is because a report<sup>12</sup> by the Zimbabwe Human Rights NGO Forum in partnership with the Southern Defenders and Accountability Lab citing the 2019 Labour Force and Child Labour Survey (LFCLS) by Zimbabwe National Statistics Agency (ZimStat) noted that,

*“the NGO sector in the country employed 1,2% of the total workforce, translating to an aggregate figure of 17 643 formal jobs. Any disruptions of the activities of NGOs could threaten these jobs as well as thousands of livelihoods.”*

Therefore, the closure of NGOs will usher many families and their dependents into poverty which has already affected half of the entire population. Extreme poverty has since increased by 1.3 million from 6.6 million in 2021 due to COVID-19 leaving 7.9 million people in need of assistance<sup>13</sup>.

#### 4. The Current Legal Frameworks Governing the Operations of PVOs In Zimbabwe

The operations of CSOs in Zimbabwe are governed by the Private Voluntary Organisations Act [Chapter 17:05], Deeds Registries Act [Chapter 20:05] or the Universitas under common law. Arguably, the existing frameworks concentrate too much power in the hands of the Minister. It also excludes universitas and trusts, thereby rendering their operations less effective. The current legal framework promotes an intrusive reporting mechanism by which the government has unhealthy potential powers to meddle with the operations of CSOs. There is also a possibility of micro-managing of PVOs as members of the PVO Board of Zimbabwe are appointed by the Minister (Minister of Labour, Manpower Planning and Social Services)<sup>14</sup>.

#### 5. How The Bill Shrinks the Civic Space?

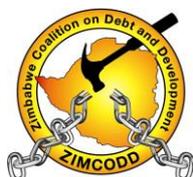
This section gives an evaluation of the PVO Amendment Bill under the prism of human rights. It seeks to unearth democratic anomalies that signify a paradigmatic shift from a somewhat-liberally regulated system to a “sophisticated” despotic machinery tailor-made to tighten the incumbent’s iron grip on power ahead of the 2023 elections. Thus, the road to autocracy and tyranny is therefore presented hereunder:

<sup>11</sup> For example, the Transitional Stabilization Programme, National Development Strategy I

<sup>12</sup> Punching Holes into a Fragile Economy – The Possible Economic Impact of the Private Organisations Amendment Bill gazetted in November 2021

<sup>13</sup> <https://www.theindependent.co.zw/2021/10/01/taming-inflation-an-arduous-task/#:~:text=The%20World%20Bank%20Economic%20Update%20on%20Zimbabwe%20released,7%2C9%20million%20in%202020%20%28half%20of%20the%20population%29>

<sup>14</sup> <https://www.fodpz.org/uncategorized/new-appointee-to-the-pvo-board-of-zimbabwe-representing-persons-with-disabilities/>



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### **a) Debarment for Political Involvement**

Under the PVO Amendment Bill, PVOs are set to be banned from engaging in political activities or partaking in any form of political lobbying on behalf of any individual, organization, or political party, and it imposes penalties for those PVOs that violate the Act in this manner by way of a fine of level twelve or imprisonment for a period not exceeding one year, or both.

### **b) PVO Re-defined**

The Bill extends the present definition of "private voluntary organization" with a considerably broader term that includes those groups that are not covered by the current PVO Act, such as universitas and trusts. This indicates that these organizations will have to re-register and will be subjected to the board and the Minister's approval. Thus, infusing micro-regulation which is a function of totalitarianism.

### **c) Harsh Civil Penalties for PVOs**

The PVO Amendment Bill states that, a designated institution that fails to register as a private voluntary organization shall be guilty of an offence and liable to a fine not exceeding level fourteen<sup>15</sup>. It goes further to add that each member of the governing body of that organization or institution shall be liable to the same offence and penalty, and additionally or alternatively, shall be liable to imprisonment for a period not exceeding ten years. Challenges are that the registration of PVOs might be weaponised for arbitrary arrest of CSOs leaders thereby shrinking democratic participation in political and civic space by citizens and CSOs.

### **d) PVOs Subjected to Risk Assessment**

The Bill subjects PVOs to risk assessments at least once every five years. In this scenario, the parameters of the risk or the risk itself is not defined. Thus, it is subjected to the discretion of one responsible for risk examination. Critical to note is that, on the basis of such a risk assessment, the Minister shall compel the organization to take specific actions to minimize the identified risk or vulnerability within a set time. The Minister is empowered to impose remedial measures calibrated to eliminate or reduce the threat or vulnerability identified after the assessment.

### **e) Monocracy Through Minister and Special Requirements**

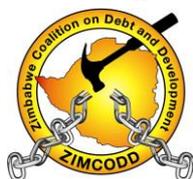
The Minister is given excessive authority to determine if any legal person, legal arrangement, body or association of persons, or institution is a high risk or vulnerable to misuse for the purposes of funding terrorism, terrorist organizations, or terrorist causes to register the same as a PVO in terms of the Amendment Bill. The Minister may prescribe such additional or "special requirements", obligations, or procedures, not inconsistent with the Amendment Bill, that shall apply to such institution in order to mitigate against such risk or vulnerability. Politics is the struggle for power and previously the Zimbabwean government has used draconian clauses and laws to restrict anything that might appear like a threat to its power. Therefore, worries are that, if the Bill is ascended Zimbabwe would have legalised authoritarianism through draconian bill.

### **f) Suspension of Executive Committee of an NGO**

The Amendment Bill seeks to entrench the government's powers and weaken the independence of NGOs. It notes that, in the event that one executive committee member fails to discharge his duties or deviate from the specified mandate, the minister may apply to

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<sup>15</sup> According to the Criminal Law Codification and Reform Act, Level 14 offences, are the highest level of offences, now attract a fine of \$1,6 million up from \$800 000 and include crimes such as concealing treason, deliberately transmitting HIV, robbery which is not committed in aggravating circumstances.



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the High Court seeking permission to appoint someone into the executive committee of that PVO. In the event of misconduct by a trustee or an executive committee member, the minister also has the power to write to the High Court seeking the dismissal of that trustee or an executive member.

### **g) Power of Registrar to Issue Civil Penalty Orders**

The Amendment Bill gives the Registrar the power to issue civil penalty orders. The Bill notes that, the Registrar may serve a civil penalty order on the defaulter if he or she fails to comply with any provision of the Amendment Bill, or any rules or orders made under it, for which a civil penalty is stipulated in the Bill. The civil penalty will be paid either by the office bearer or office of an organisation which would have been deemed to be in default. The penalty is to be paid within ninety-day period or subject to a fine not exceeding level six, imprisonment for not more than one year, or both. Therefore, considering the nature of the relationship between the government and civil society<sup>16</sup>, there is a possibility that the registrar will use civil penalties against unpopular NGOs.

## **6. The Bill in relation to the FATF recommendations on terrorist financing and money laundering?**

Is the Bill really in alignment with the Financial Action Task Force (FATF)? Now that Zimbabwe has been removed from the FATF grey list, what does it mean for the Bill? Did the FATF recommendations specify that the government should be involved in the administration of PVOs?

## **7. Removal of Zimbabwe from the Financial Action Task Force-FATF Grey List**

In 2019 October, Zimbabwe was placed on the FATF Grey list and in line with the recommendations made for her to develop mechanisms and policies that combat money laundering. In line with recommendation 8, which sought to guarantee the compliance of PVOs with financial regulation and ensure that PVOs are not used for money laundering and to finance terrorism, the PVO Amendment Bill was proposed. However, following an On-Site Evaluation conducted in January 22, on the 4<sup>th</sup> of March 2022, the FATF recommended that Zimbabwe be removed from the grey list, a clear indication that Zimbabwe's qualification on the grey list had little to do with PVOs. One can safely conclude that the PVO Act Amendment Bill has little to do with financial compliance and more to do with power centralisation and retention.

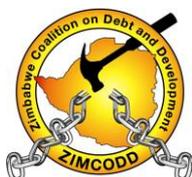
## **8. The Economic Impact of The PVO Amendment Bill**

The PVO Amendment Bill also has economic impacts which include but not limited to the following:

- i. The PVO Bill further increases poverty prevalence in Zimbabwe, considering the fact that NGOs are helping both urban and rural folks who are failing to afford basic necessities through their monthly stipends to urban dwellers. NGOs such as Mercy Corps, DanChurchAid, and Welthungerhilfe are giving US\$ 12 per head to urban households that would have qualified into their vulnerability status. Therefore, if the operations of these NGOs are interrupted, there is a possibility of a huge decline in aggregate consumer spending. Consumer spending is a key component of aggregate

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<sup>16</sup> Where some have been described as rogue organisations, concerned about fulfilling their regime change agenda



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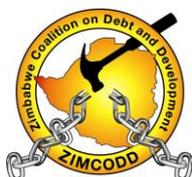
- demand, Gross Domestic Product (GDP). Thus, Zimbabwe will continue to witness growth figures without a human face.
- ii. Unemployment will skyrocket. NGOs are employing over 18,000 in pushing development agenda. Therefore, the closure of NGOs will widen the unemployment rate and entrench inequality and poverty. Already, approximately over 70% of the Zimbabwean population is unemployed.
  - iii. It will increase the investment risk premium of Zimbabwe thus scaring away potential investors particularly thereby undermining the flow of foreign direct investment (FDI).
  - iv. There is a possibility that the Government will rely mostly on money printing to cover its budgeted expenditures. This will fuel the already massively depreciating exchange rate and skyrocketing prices. This is coming from the fact that NGOs are one of the top generators of forex in Zimbabwe.
  - v. The economic recovery and re-engagement ambitions spelt in the National Development Strategy I (NDSI) will be greatly undermined. This is because the Bill will exacerbate the already sour relations with International Financial Institutions like International Monetary Fund (IMF), World Bank and Paris Club. This is likely to further increase the cost of borrowing for Zimbabwe, which might result in the proliferation of non-concessionary Resource Backed Loans (RBLs).
  - vi. Public debt likely to balloon. The Reserve Bank of Zimbabwe (RBZ) has become an engine for accumulating public debt in Zimbabwe. To increase forex to support on the auction market, RBZ may end up borrowing abroad (e.g.: it borrowed \$1.4bn between 2017 and 2019 from Afreximbank). In the end, the debt which is already unsustainable will continue to balloon. This will cripple the country's ability to mobilize resources.

## 9. Recommendations and Alternatives to The PVO Amendment Bill

- i. The Bill is ultra-vires; thus, it signifies a paradigm shift from constitutionalism. Therefore, ZIMCODO recommends the government to uphold the Constitution and set aside a Bill that violates Constitutional freedoms of association and civic action.
- ii. Rather than trying to shrink the civic space, the government through the Ministry of Finance and the Financial Intelligence Unit (FIU) must tighten finance and anti-money laundering laws.
- iii. The independence of CSO is paramount for the proliferation of democracy and greater public participation which is the foundation of representative democracy. Thus, ZIMCODO recommends that, the government must not undermine the independence of CSOs.
- iv. If Zimbabwe is to attain optimum democracy, there is need for a self-regulation board and frameworks for PVOs, borrowing the concept from Law Society of Zimbabwe as well as the Nurses and Doctors associations.
- v. The Ministry of Public Service, Labour and Social Welfare, should make impartial appointments to the PVO board, so as to strengthen the PVO Board of Zimbabwe and its oversight role.

## 10. Conclusion

Of greatest concern is the fear that the PVO Amendment Bill will infringe the social and economic rights of Zimbabweans by prohibiting PVOs to be involved in national political processes particularly during a volatile and contested electoral period. Broadly defined, political processes entail national governance systems such as policy formulation, implementation and participation. Thus, restricting NGOs to operate in the political

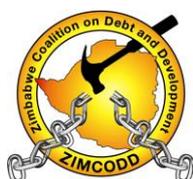


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environment is tantamount to restrict them in participating in governance and this has a detrimental effect on greater public participation which is essential for representative democracy. It is also in contrast with the Constitution of Zimbabwe and the first- and second-generation rights. The PVO Amendment Bill is ultra-vires as it is inconsistent with the Constitution of Zimbabwe.

Prosecution is likely to proliferate as the bill can be abused to target human rights defenders, CSO leaders and pro-democracy activists. This is because the term “political involvement” is vague, ambiguous, and broad and is prone to abuse. The right to political participation as enshrined in the bill of rights by the Constitution) is greatly undermined together with regional and international conventions that Zimbabwe is signatory to.

The Amendment Bill promotes monarchy and centralisation of power. It gives too much power to the executive to interfere with the operations of PVOs. Arguably, the Bill seeks to distort the established system of separation of powers by usurping the voices of the masses which are usually echoed through the legislative (representative democracy) by undermining greater public participation (shrinking civic space). Thus, it tries to undermine the legislative by determining the number of those who participate in the political process and issues that are to be discussed in the attentive public. It intends to shape the policy discourse in the attentive public and this is far from democracy and the concept of social contract by which the modern state is established upon.



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