



**Position Paper on the amendment of the
Private Voluntary Organisations Act (PVO)
in order to comply with the recommendations
made by the Financial Action Taskforce
(FATF)**



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Introduction and background

In 2019, the Government of Zimbabwe (GoZ) approved the principles for amending the Private Voluntary Organisations Act [Chapter 17:05] (PVO Act) according to media reports¹. The rationale for the amendment was that the “amendment seeks to ensure that PVOs in Zimbabwe are not used as conduits for money laundering and funding of terrorist activities, while seeking to bring about efficiency in the registration and regulation of the same”.²

The basis of the proposal to amend the relevant laws was that Cabinet had received a presentation, which indicated that the amendment was necessary to enable Zimbabwe to be compliant with the Financial Action Task Force (FATF) recommendations on combating money laundering and financing of terrorism.

The FATF is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing.³ FATF prescribed 40 Recommendations, the FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard. Two are relevant and related to the basis for amending the PVO Act, which is Recommendation 1 and 8.

1 Mugabe. T (2019), “Government amends Private Voluntary Organisations Act”, The Chronicle, 14 March [Online]. Available at: <https://www.chronicle.co.zw/government-amends-private-voluntary-organisations-act/>

2 Ibid

3 International Monetary Fund: Anti – money laundering / combating the financing of terrorism (AML/CFT) <https://www.imf.org/external/np/leg/amlcft/eng/aml4.htm> Accessed 9 November 2020.

Recommendation 1 provides that countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate efforts to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively.

Recommendation 8 provides that countries should review the adequacy of laws and regulations that relate to non-profit organisations which the government has identified as being vulnerable to terrorist financing abuse. The activities of NGOs are one of the many instances that may pose a risk of abuse for money laundering and funding of terrorist organisations.

Zimbabwe is a member of Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), a regional body set to assist member nations in adopting and implementing the FATF Recommendations was reviewed in 2016 and 2018⁴. Zimbabwe was reviewed as being partly compliant (PC) with its implementation of Recommendation 1.

According to the report, Zimbabwe, through the National Risk Assessment (NRA) carried out in 2015, was able to identify and assess its risks. The NRA found that the significant risks faced in Zimbabwe arose from “illegal dealings in precious stones and metals, fraud and corruption, externalisation of currency and smuggling of goods”.

However, the report noted that the Government of Zimbabwe (GoZ) faced challenges during the National Risk Assessment process due to the data being old and not readily being

4 Mutual Evaluation Report 2016

available. Zimbabwe was rated as non-compliant (NC) with recommendation 8. This would probably explain the urgency to amend the PVO Act in order to become compliant.

Of concern is that to date, the PVO Amendment Bill has not been made public including CSOs, whose operations will be affected by the proposed amendments. Over the years, the GoZ has passed policy directives, made public utterances or taken measures that have made it difficult for Not for Profit Organizations [NPOs], in particular civic society organizations to operate.

These include cumbersome requirements such as the signing of Memorandum of Agreement (MoUs) with local authorities before NGOs can operate in communities, publishing a list of NGOs which are alleged to be a threat to peace and security in Zimbabwe,⁵ and statements about monitoring of the NPO sector.

There is therefore concern that this amendment, if effected without consultation with NPOs, may negatively affect their legitimate operations.

Government and other stakeholders responsible for compliance with the FATF Recommendations have done some consultations with some CSOs. Civil Society Organisations have also done their own consultative meetings, and the collective CSO position regarding the amendment of the PVO Act in order to comply with FATF requirements is as follows;

5 Adeb. I (2004), Accountability and Transparency Fostering Accountability in Zimbabwean Civil Society, The International Journal of Not-for-Profit Law, Volume 6, Issue 3, June 2004. Available at: <https://www.icnl.org/resources/research/ijnl/fostering-accountability-in-zimbabwean-civil-society>

- A Sectorial Risk Assessment (SRA) needs to be conducted in the NPO sector in compliance with FATF Recommendation 1. This will identify the money laundering and terrorism financing risks, as well as proportionate and commensurate measures to mitigate the identified risks.
- A national working group made up of stakeholders, including CSOs, needs to be set up for purposes of the SRA.
- The outcome of the SRA will inform the changes that need to be made in the PVO Act, in order to comply with FATF Recommendation 8.
- There is need for a Rights Based Approach (RBA) in the anti-money laundering and countering of trafficking of finances efforts, as failure to do so would result in operational and legal restrictions being placed on NPOs.
- The GoZ must conduct consultations with NPOs and other stakeholders, as multi-stakeholder engagements will be beneficial to all parties. These should include capacity building and development of CSOs on policies to guard against money laundering and terrorist funding. The fast-tracking of policies and laws without broad consultations may have a negative impact on the operations of NPOs.
- The PVO Act amendment should;
- Clarify if CSOs are defined as PVOs. Traditionally, PVOs are viewed as humanitarian organisations. In addition, government consultations with the NPO sector are usually restricted to the humanitarian sector to the exclusion of CSOs, yet CSOs are likely to be affected by

the impending amendments to the PVO Act.

- Include representation of CSOs in the PVO Board. The current representation of the non-profit sector seems to be limited to organisations working in the humanitarian sector. CSOs, work on governance and human rights sector, hence, sometimes the issues are different and there is need for representation of all groups in the NPO sector including CSOs.
- Provide for a less bureaucratic manner to register PVOs. The current procedure set out in Section 9 of the PVO Act is cumbersome and it has no timelines, hence registration usually takes longer than is necessary.
- Define the terms money laundering and financing of terrorism. The definition should be consistent with international standards such as the Model Legislation on Money Laundering and Financing of Terrorism which was developed by the United Nations Office on Drugs and Crime (UNODC) and the International Monetary Fund (IMF)⁶.
- Define the term ‘beneficial owner’ in a manner consistent with international instruments. According to the Model Legislation on Money Laundering and Financing of Terrorism,⁷ a beneficial owner shall mean the natural person who ultimately owns or controls a customer or an account, the person on whose behalf a transaction is being conducted, or the person who ultimately exercises effective control over a legal person or arrangement’.

6 The United Nations Office on Drugs and Crime International Monetary Fund – Model Legislation on money laundering and financing of terrorism

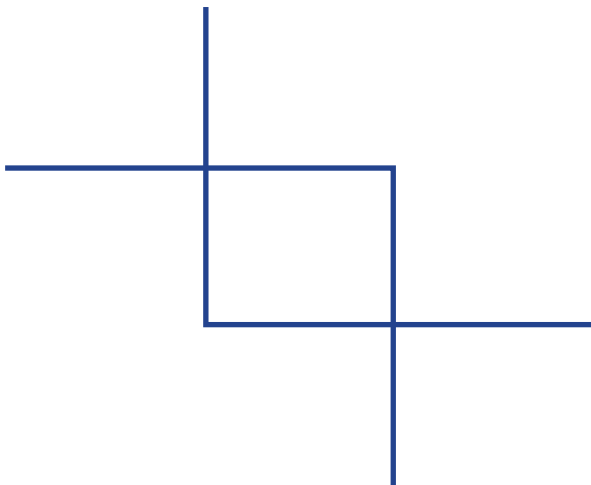
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- Comply with international standards and best practices in the region and internationally on regulation of the NPOs,
- Be consistent with values and freedoms set out in the Constitution of Zimbabwe,
- The PVO Act should allow for continuous engagement at the highest level.

Conclusion

We reiterate that amending the PVO Act in order to have it aligned to the FATF Recommendations must be done after an extensive risk assessment of the NPO sector has been carried out.

To do so without understanding the risks that NPOs are vulnerable to; the type of organisations that are at high risk; and the migratory measures that should be put in place to combat these risks, would be putting the horse before the cart. The sectorial risk assessment will be best placed to inform all the stakeholders on the nature and extent of the proposed amendments to the PVO Act.



Harare Office (National coverage) Kodzero-Amalungelo House, 103 Sam Nujoma Street, Harare Phone: (+263 242) 705370/708118/764085 Fax: (+263 242) 705641

Mutare Office (Covering Manicaland and Masvingo) Winston House, Ground Floor, Cnr 1st Avenue / 2nd Street, Mutare. Phone: (+263 20) 60660

Bulawayo Office (Covering Matabeleland, Midlands and Bulawayo) 3rd Floor Barclays Building, 8th Avenue & JNM Nkomo Street, Bulawayo. Phone: (+263 29) 722014

24-Hour Hotlines National: (+263) 772 257 247 Matabeleland/Midlands: (+263) 773 855 635 Manicaland/ Masvingo: (+263) 773 855 718 Email: info@zlh.org.zw Website: www.zlhr.org.zw Facebook: Zimbabwe Lawyers for Human Rights Twitter: @ZLHRLawyers