

# Zimbabwe's Private Voluntary Organisations Act – 2024 Amendments:

Understanding the Implications for PVOs

PUBLISHED: NOVEMBER 2024



# Zimbabwe's Private Voluntary Organisations Act – 2024 Amendments:

## Understanding the Implications for PVOs



This Guide is produced for informational purposes only and does not constitute legal advice or substitute for legal counsel. Laws may change, and interpretations of local law may vary. The Guide focuses on key considerations for PVOs in light of the 2024 amendments to the PVO Act and does not discuss all of the Act's rules.

Published in November 2024

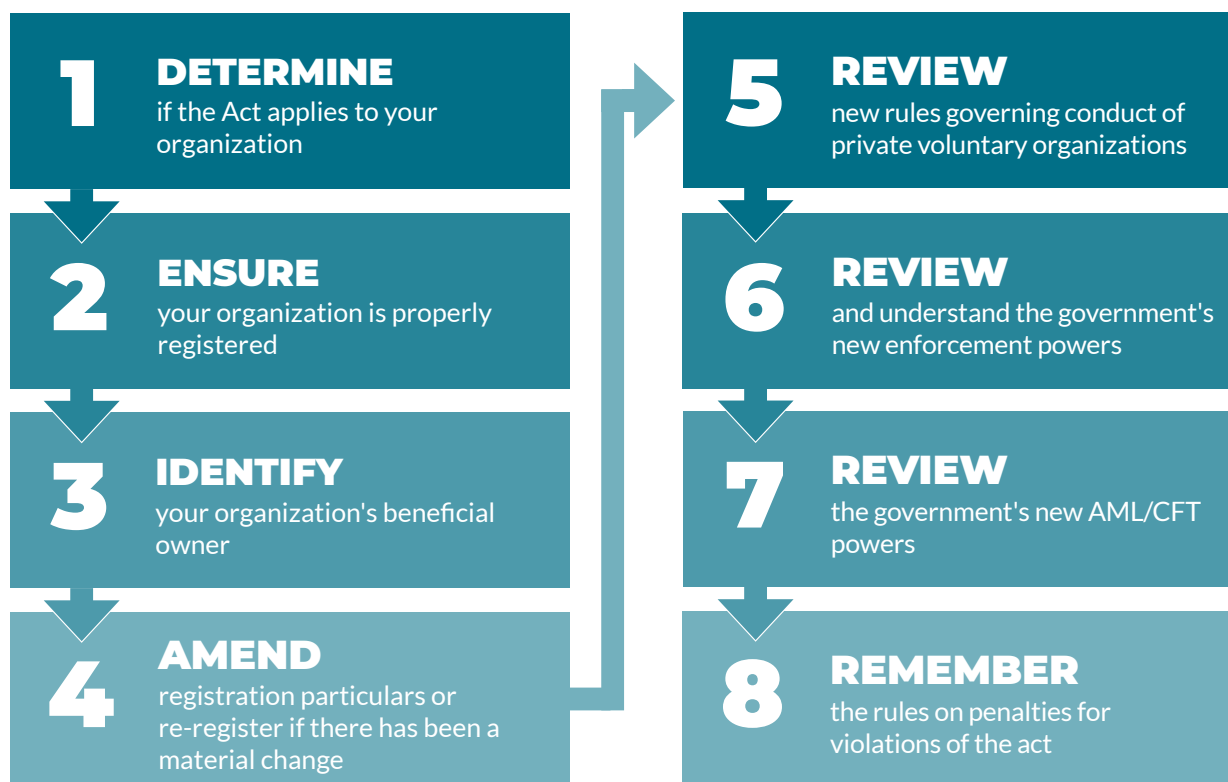
# INTRODUCTION

The Private Voluntary Organisations Act (the Act) governs private voluntary organizations (PVOs) in Zimbabwe. The Act provides rules on PVOs' registration, internal governance, and funding, among other matters. In October 2024, Parliament passed a Bill to amend the PVO Act and sent it to the desk of President Emmerson Mnangagwa. If the President signs the Bill, it will be enacted into law.<sup>1</sup>

The International Center for Not-for-Profit Law (ICNL) prepared this Practical Guide to highlight key considerations for PVOs and other members of civil society in light of the amendments to the PVO Act. The Guide describes **eight actions PVOs can take to strengthen compliance and prepare for the amendments to come into force.**

The PVO Act is considered to be generally restrictive of PVOs' rights. Where relevant, the Practical Guide provides commentary on key areas requiring further advocacy to align Zimbabwe's laws with international standards and best practices.

## OVERVIEW: KEY ACTION STEPS FOR ORGANIZATIONS



<sup>1</sup> Private Voluntary Organisations (Amendment) Bill, HB.2A of 2024. Civil society observers have argued that there are discrepancies between the Bill as adopted by Parliament (HB.2A) in October and the version adopted by the National Assembly earlier this year (HB.2). This guide is based on the HB.2A version of the Bill. ICNL will continue to monitor for and analyze the version eventually gazetted to identify any changes in that version.

# 1

## DETERMINE

### if the Act Applies to Your Organization

#### Types of organizations covered by the Act:

A “private voluntary organization” is defined as “any legal person, legal arrangement, body or association of persons, corporate or incorporate, or institution” whose objects include one or more of the following:

- a. providing for the material, mental, physical or social needs of persons or families;
- b. providing charity to persons or families in distress;
- c. preventing social distress or destitution;
- d. providing assistance or conducting activities to promote the standard of living of persons or families;
- e. providing legal aid funds;
- f. preventing animal cruelty;
- g. other objects as prescribed by the government;
- h. the collection of contributions for the above.

#### These organizations are not private voluntary organizations:

The below organizations are excluded from the definition of “private voluntary organization”:

- a. an institution or service maintained and controlled by the State or a local authority;
- b. a religious body in respect to its religious work;
- c. a trust established directly by any enactment;
- d. an educational trust approved by the Minister;
- e. a body or association of persons whose benefits are exclusively for its own members;

- f. a health institution registered under the Health Professions Act in respect of activities for which it is registered;
- g. a body or association in respect of activities carried on for the benefit of a hospital or nursing home approved by the Minister;
- h. a political organization in respect of its political activities;
- i. the Zimbabwe Red Cross Society;
- j. a trust registered with the High Court, or with the Registrar of Deeds under Section 70A of the Deeds Registry Act;
- k. a State-sponsored entity.<sup>2</sup>

## COMMENTARY



The African Commission on Human and Peoples' Rights (ACHPR) emphasizes that informal associations should be allowed to exist and operate even if they are not registered.<sup>3</sup> Under the PVO Act, registration is mandatory for any organization whose work includes one of the objects listed in the PVO Act. This mandatory registration requirement violates international law, which forbids the freedom of association from being contingent on registration or legal entity status. Under ACHPR standards, an organization's legal status should be presumed once the authorities receive notification by the founders that an organization was created.<sup>4</sup>

<sup>2</sup> A "state-Sponsored entity" means "an arm, agency or representative of a State whose government is party to any bilateral or other agreement with the Government of Zimbabwe, in terms of which that entity is permitted to operate in Zimbabwe or any part thereof; or (b) is not an arm, agency or representative of a State referred to in paragraph (a), but which is appointed as the agent or representative of a State in terms of any bilateral or other agreement with the Government of Zimbabwe for the purpose of operating in Zimbabwe or any part thereof (which appointment must be evidenced in the agreement itself or by notice in writing by that State to the Government of Zimbabwe)" (PVO Amendment Bill, Section 2, amending Section 2 of the Act).

<sup>3</sup> African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 11.

<sup>4</sup> African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 13.

# 2

## ENSURE

### that Your Organization is Properly Registered

#### Which organizations must register as private voluntary organizations?

Any trust, body, association of persons, or institution must register as a PVO if:

- i. it pursues one of the objects of a PVO and is not specifically exempted in the Act;<sup>5</sup> and
- ii. it is not exclusively self-funded.

The PVO Act prohibits any person from collecting contributions from the public except as allowed by the Act. Unregistered organizations are prohibited from conducting activities or receiving a grant from the state.



Even if the trust is already registered with the High Court or the Registrar of Deeds it would be required to register as a PVO if it meets the above requirements.<sup>6</sup>

An organization that **exclusively uses its own funds or assets** to support its activities is not required to register as a PVO. This can include using funds generated by its own investments or “gainful activities.”<sup>7</sup>

However, if an organization seeks or obtains funding from any source within or outside of Zimbabwe, or if it collects contributions from the public, it is not self-funded. In practice, many PVOs receive at least some funding from an external source and are therefore *not* considered “self-funded.”

<sup>5</sup> See “Determine If the Act Applies to Your Organization” above.

<sup>6</sup> PVO Amendment Bill, Section 4 (substituting new Section 6 into the Act).

<sup>7</sup> PVO Amendment Bill, Section 4 (substituting new Section 6 into the Act).

## Can the government require other types of organizations to register?

Yes. Under the amendments, the Minister of Public Service, Labour, and Social Welfare is empowered to designate other types of organizations as “high-risk ... or vulnerable to misuse” for funding terrorism. A designated person or entity must register as a PVO (see “Review the Government’s New AML/CFT Powers” below).<sup>8</sup>

## What if my organization is already registered as a PVO?

An organization that is properly registered as a PVO before the proposed amendments are in force has fulfilled its obligation to register.

## What if my organization is unregistered?

An unregistered organization that meets the definition of PVO and is lawfully operating before the amendments go into force must apply to register. It may then continue operating pending the outcome of registration proceedings. For example, a trust that is not registered as a PVO but was lawfully operating before the amendments may be required to register under the amendments. This trust may continue to operate while its registration application is pending.<sup>9</sup>

## When is the deadline to register?

The Bill's transitional provisions state that "pre-existing charitable entities" will need to be registered within three months of the amendments coming into force. However, **it is important to note that there is some confusion about the deadline due to a possible drafting error in the Bill.** Although the transitional provisions give a three month deadline, the Bill retains a provision (Section 4, substituting new Section 6 into the Act) which describes a 30 day deadline to register. Some observers report that this may be due to a drafting error and the deadline to register will be three months from the date the amendments come into force, as stated in the transitional provisions. However, PVOs should be aware that the version of the Bill under review by the President in November 2024 contains this discrepancy. If the Bill is enacted, it is hoped that this discrepancy will be fixed in a final version.

---

<sup>8</sup> PVO Amendment Bill, Section 9 (substituting new Section 22 into the Act).

<sup>9</sup> PVO Amendment Bill, Section 4 (substituting new Section 6 into the Act).

## What are the penalties for failure to register?

The following penalties may be imposed for violations of the PVO Act's registration requirements:<sup>10</sup>

A fine not exceeding level 12 (currently equal to USD \$2,000) or imprisonment for up to one year, or both, for commencing or conducting activities, or collecting contributions from the public, without being registered;

A fine not exceeding level 12 (USD \$2,000) or imprisonment for up to two years, or both, for taking part in the management or control of a PVO, knowing that the PVO has violated registration rules.

### REGISTRATION PROCEDURE<sup>11</sup>

#### STEP 1:

Organization submits registration application, organizational constitution, and fee to the Registrar of PVOs.

#### STEP 2:

If it appears to the Registrar that the PVO has a beneficial owner or controller, the Registrar may require the PVO to submit an affidavit disclosing the beneficial owner's or controller's name and the extent of his or her beneficial ownership or control of the PVO (see "Identify Your Organization's Beneficial Owner or Controller" below for definitions and details on this process).

#### STEP 3:

The PVO must publish in a local paper, at its own expense, a notice calling for people to lodge objections with the Registrar of PVOs within the prescribed time limit (within 21 days of the date of publication).

#### STEP 4:

When satisfied that the above steps have been complied with, the Registrar will review the organization's application, constitution, and any objections lodged against it.

The Registrar will then either grant the application and issue a certificate of registration to the PVO or reject the application if:

- the organization is not furthering the objects mentioned in its registration application; or
- the organization is non-compliant with the Act in any other respect.

<sup>10</sup> PVO Amendment Bill, Section 4 (substituting new Section 6(5) into the Act). Fine levels shall not exceed level 12 for these offenses. Under the Criminal Law (Codification and Reform) (Standard Scale of Fines) Notice, 2023 (Statutory Instrument 14A of 2023), a level 12 fine is equal to USD \$2,000.

<sup>11</sup> This procedure is detailed in PVO Amendment Bill, Sections 5 and 7 (amending Section 9 of the Act and substituting new Section 14, respectively).



## STEP 5 (OPTIONAL):

Where the Registrar of PVOs rejects a PVO's application to register, the PVO may, within 14 days of receiving notice of the rejection, appeal to the Minister of Public Service, Labour, and Social Welfare. The Minister may either (1) uphold the decision of the Registrar or (2) refer the decision back to the Registrar for re-consideration on one or more of the following grounds:

- allowing extraneous or irrelevant considerations to affect the decision;
- failure to take into account relevant considerations in arriving at the decision;
- any material mistake of fact or law that tainted the decision;
- interest in the cause, bias, malice, or corruption of a person involved in making the decision;
- gross irregularity in the proceedings or decision.

## STEP 6 (OPTIONAL):

If a PVO disagrees with the decision of the Minister under Step 5, it may, within 14 days of receiving the Minister's decision, appeal to the Administrative Court. The Administrative Court has the same powers as the Minister to dispose of the appeal.

## COMMENTARY



Registration procedures under the PVO Act are complex. For example, once a registration application has been lodged, a PVO must publish in a local paper, at its own expense, a notice calling for persons with objections to lodge them with the Registrar of PVOs within 21 days of the date of publication. This is burdensome and invites undue interference with PVOs' applications, contravening the African Commission standard that registration procedures must be "simple, clear, non-discriminatory and non-burdensome, without discretionary components."<sup>12</sup> Further, the grounds for denial are too vague. Specifically, the Registrar may deny an application if the organization "appears" unable to abide by the objectives stated in its application or if the constitution and management of the organization fail to comply with the PVO Act. This provides wide discretion to the Registrar to refuse to register an applicant organization.

Further, organizations should not be required to register more than once.<sup>13</sup> Requiring a "pre-existing charitable entity" to re-register interferes with the freedom of association because it provides the Registrar with an opportunity to delay or take away the legal status of organizations, which may disproportionately affect organizations that work on sensitive or controversial issues.

<sup>12</sup> African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 13.

<sup>13</sup> African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 17.

# 3

## IDENTIFY

### Your Organization's Beneficial Owner or Controller

The amendments to the PVO Act require an organization to provide information about its “beneficial owner” or “controller” to the Registrar of PVOs in some circumstances.

#### What is a “beneficial owner” or “controller”?

The amendments define these as –

- **beneficial owner:** a person who “is able to exert a significant or preponderant voice in the affairs of the organisation,” typically due to ownership of the organization or its assets.<sup>14</sup>
- **controller:** a person other than a beneficial owner who “exerts a significant or preponderant voice in the affairs of the organisation,” due to the size of the person’s contributions to the organization or other reasons.<sup>15</sup>

A person<sup>16</sup> is deemed to “exert a significant or preponderant voice in the affairs” of a PVO if he or she can:

- make a decision concerning the PVO’s governance or the exercise of its functions that is binding on the PVO’s governing body;
- overrule or veto a decision of the governing body; or
- directly or indirectly control twenty-five percent or more of the governing body’s votes.

<sup>14</sup> PVO Amendment Bill, Section 2 (amending Section 2 of the Act).

<sup>15</sup> *Id.*

<sup>16</sup> For purposes of this provision, the “person” who exerts “a significant or preponderant voice in the affairs of an organisation” may include “a State, or an arm, organ, agency or representative of a State” (PVO Amendment Bill, Section 2, amending Section 2 of the Act).

# When must a PVO notify the Registrar of its beneficial owner or controller?

A PVO may be required to notify the Registrar of PVOs of its beneficial owner or controller in two situations:<sup>17</sup>

- a. If the Registrar examines the PVO's registration documents or other information and believes that the PVO has a beneficial owner or a controller, the Registrar will notify the PVO in writing. Upon receipt of this notification, a PVO must provide the name of its beneficial owner or controller, and the extent of that person's beneficial ownership or control, to the Registrar through a sworn affidavit.
- b. If a PVO's beneficial owner or controller changes, the PVO must amend its registration particulars to reflect this change (see "Amend Registration Particulars or Re-Register If There Has Been a Material Change" below).

## COMMENTARY



The Financial Action Task Force (FATF) is the inter-governmental organization that sets international standards to prevent money laundering (ML) and terrorism financing (TF) through 40 Recommendations that national governments must follow. FATF Recommendation 24 provides that "[c]ountries should ensure that there is adequate, accurate, and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities."<sup>18</sup> At the same time, a growing consensus among global civil society experts has questioned whether it is appropriate to apply beneficial ownership rules to CSOs and non-profit entities.<sup>19</sup> As stated by the Global NPO Coalition on FATF,<sup>20</sup> the concept of beneficial ownership "intends to provide more transparency into complex for-profit company law structures with the aim of identifying those that benefit financially from such structures."<sup>21</sup> Consequently, beneficial ownership rules, such as those contained in the amendments to the PVO Act, may be difficult for CSOs to understand and implement, as non-profit entities such as PVOs do not distribute revenue to their members.<sup>22</sup>

<sup>17</sup> PVO Amendment Bill, Sections 5 and 6 (amending Section 9 and inserting new Section 13A into the PVO Act, respectively).

<sup>18</sup> FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*, page 20.

<sup>19</sup> See, e.g., Global NPO Coalition on FATF, "FATF R.24 Review: Global NPO Coalition on FATF Comments" (March 2021), pages 3-5. Available here: <https://fatfplatform.org/news/global-coalition-input-to-fatf-recommendation-24-review>; see, also, EU AML/CFT Global Facility, *Typologies of Illicit Financial Abuse of the NPO Sector: Specificity, Complexity, Complicity and Harm* (August 2021), pages 71-72.

<sup>20</sup> The Global NPO Coalition on FATF is an international network of non-profit organizations dedicated to improving the quality and effectiveness of FATF's standard on the non-profit sector.

<sup>21</sup> Global NPO Coalition on FATF, "FATF R.24 Review: Global NPO Coalition on FATF Comments" (March 2021), page 3.

<sup>22</sup> See EU AML/CFT Global Facility, *Typologies of Illicit Financial Abuse of the NPO Sector: Specificity, Complexity, Complicity and Harm* (August 2021), page 71.

# 4

## AMENDMENT

### of Registration and Registration Transfer

Under the amendments, a PVO will need to **apply to amend its registration particulars** if there has been a “material change” to those particulars. A “material change” is defined as:

- any change in the PVO’s constitution regarding the disposal of assets when a PVO is wound up or dissolves;
- any change in the PVO’s beneficial ownership or controller, unless the change involves a transfer of its registration certificate to another PVO or person;
- any addition, diminution, or change to the PVO’s objects that may significantly impact the scope or nature of its operations in Zimbabwe; and
- any variation to the PVO’s territorial scope of operation in Zimbabwe.<sup>23</sup>

A PVO will need to **apply to transfer its registration certificate** if there has been:

- any change in the PVO’s beneficial ownership or controller, involving a transfer of its registration certificate to another PVO or person (i.e., if the PVO merges with or is taken over by another organization).<sup>24</sup>

### What is the penalty for non-compliance?

A PVO that fails to comply with these rules will be liable to a penalty of USD \$100 for each day it is non-compliant (see “Remember the Rules for Penalties for Violations of the Act” below).

<sup>23</sup> PVO Amendment Bill, Section 6 (inserting new Section 13A into the PVO Act).

<sup>24</sup> *Id.*

## AMENDMENT PROCEDURE<sup>25</sup>

### STEP 1:

A PVO submits an application to amend its registration particulars to the Registrar of PVOs. This application must be made in the prescribed form and no later than **one month** from the date of the material change.

### STEP 2:

If the Registrar determines that the material change will not adversely impact the defense, public safety, public order, public morality, public health, or general public interest of Zimbabwe, the Registrar may update the relevant entry in the Register of PVOs and notify the applicant.

If the Registrar determines that the material change will adversely impact the interests listed above, the Registrar may reject the application and allow the applicant to either:

- reverse the material change that prompted the application within “a specified period”; or
- re-register under the amendment’s ordinary registration procedure.

A PVO may continue to operate within the “specified period” it is given to reverse the material change, or while its re-registration application is pending.

### STEP 3 (OPTIONAL):

Where the Registrar of PVOs rejects a PVO’s application to re-register, the PVO may, within 14 days of receiving notice of the rejection, appeal to the Minister of Public Service, Labour, and Social Welfare. The Minister may either (1) uphold the decision of the Registrar or (2) refer the decision back to the Registrar for re-consideration on one or more of the following grounds:

- allowing extraneous or irrelevant considerations to affect the decision;
- failure to take into account relevant considerations in arriving at the decision;
- any material mistake of fact or law that tainted the decision;
- interest in the cause, bias, malice, or corruption of a person involved in making the decision;
- gross irregularity in the proceedings or decision.

The amendments do not specify a timeline for the Minister’s consideration of an appeal.

### STEP 4 (OPTIONAL):

If a PVO disagrees with the decision of the Minister under Step 3, it may, within 14 days of receiving the Minister's decision, appeal to the Administrative Court. The Administrative Court has the same powers as the Minister to dispose of the appeal.

---

<sup>25</sup> This procedure is detailed in the PVO Amendment Bill, Sections 6 and 7 (inserting Section 13A and substituting new Section 14, respectively).

## PROCEDURE TO TRANSFER REGISTRATION CERTIFICATE

### STEP 1:

If there is a “material change” in beneficial ownership or control *by virtue of the transfer of a PVO’s certificate of registration to another PVO or person*, the Secretary of the first PVO must apply to the Registrar in the prescribed form to approve the transfer. This application must be made no later than one month prior to the date of the provisional transfer.<sup>26</sup>

In its application, the PVO must specify whether it wishes to hold a separate certificate of registration, or to be issued a new certificate of registration in the name of its new beneficial owner or controller.

### STEP 2:

If the Registrar determines that the material change will not adversely impact the defense, public safety, public order, public morality, public health, or general public interest of Zimbabwe, the Registrar may update the relevant entry in the Register of PVOs and notify the applicant.

## COMMENTARY



Organizations should not be required to register more than once.<sup>27</sup> Requiring a PVO to re-register upon a material change interferes with the freedom of association because it provides the Registrar with an opportunity to delay or take away the legal status of organizations, which may disproportionately affect organizations that work on sensitive or controversial issues. The list of material changes is so broad that any organization would have to re-register for small changes, such as adding a district to the locations in which services are provided. The Registrar’s power to reject the re-registration application and reverse the material change without having to provide any reasons for the action illustrates the risk that this provision poses to a PVO’s operations and existence. Requiring re-registration is also not the least restrictive way to further a legitimate aim. Rather, a PVO could be required to include any material changes to activities or management in its annual report to the Registrar.<sup>28</sup> The Registrar could then alert the PVO if such a change would make the organization fall outside of the definition of a PVO, and provide an opportunity for the PVO to bring its practices in accordance with the PVO Act. The Registrar would then be required to apply with the High Court to de-register the organization if it believes that the organization still falls outside of the definition of a PVO. Such an approach would be a more targeted way to ensure that organizations are not taking advantage of the PVO legal form.

<sup>26</sup> The “provisional transfer” means “the date on which the certificate was provisionally agreed to be transferred or purported to be transferred before the approval of the transfer by the Registrar.”

<sup>27</sup> African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 17.

<sup>28</sup> See PVO Amendment Bill, Section 3 (substituting new Section 3(3)(e) into Part II of the Act).

# 5

## REVIEW

### New Rules Governing the Conduct of PVOs

The amendments require a PVO to conduct itself in line with the following principles:<sup>29</sup>

- a. to ascertain the identity of donors and the sources of donations;<sup>30</sup>
- b. to refuse donations from illegitimate or illegal sources and to report to the Registrar of PVOs and the appropriate authorities any such donation of which it becomes aware;
- c. to ensure its resources and every donation is used for the charitable objects for which the PVO is registered;
- d. to account transparently to its stakeholders, including its donors and beneficiaries, for how it distributes funds and implements programs;
- e. to use formal channels (e.g., registered banking institutions or other financial intermediaries regulated in Zimbabwe or in any other state) to transmit its funds from source to destination;
- f. not to discriminate between beneficiaries on the grounds of 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;<sup>31</sup>
- g. not to conduct itself in a politically partisan manner, such as using its resources to benefit members of a particular affiliation or requiring beneficiaries to pass a test of political allegiance;
- h. to be sensitive to the cultural values and norms of the community in the area where it primarily operates;
- i. to economically and socially benefit the community in the area where it operates;

<sup>29</sup> PVO Amendment Bill, Section 8 (inserting new Section 20A into the Act).

<sup>30</sup> *See id.* (stating that if the donor is anonymous, the PVO must “satisfy itself by other means that the donor is acting in good faith within the law and that the donation is made in good faith without intent to evade the law”).

<sup>31</sup> *See id.* (stating that “it shall not be deemed to be discriminatory for a private voluntary organisations to favour beneficiaries of a particular group if its express object or one of its express objects is to benefit any disadvantaged group or members of such group of a particular description in terms of ethnicity, social origin, language, class, religious belief, custom, culture, sex, gender, marital status, age, pregnancy, disability, economic or social status, or persons born out of wedlock”).

- j. in as far as possible, to employ personnel who are Zimbabwean citizens or permanent residents as its staff;
- k. to implement fair and safe labor practices.

## What is the penalty for not following these principles?

The amendments do not specify penalties for non-compliance with most of the principles listed above. However, a PVO may be liable to a civil penalty for breaching the below principles:<sup>32</sup>

- **Receiving any donation from an illegitimate or illegal source:** USD \$100<sup>33</sup> for each day the PVO is non-compliant, up to 90 days.<sup>34</sup>
- **Failure to use formal channels for the transmission of its funds:** A combination of: (a) a fixed penalty of USD \$1,000;<sup>35</sup> (b) five percent of the outstanding amount of the fixed penalty for up to 90 days; (c) an order to open a bank account with a registered banking institution or other regulated financial intermediary; and (d) a penalty of USD \$100 for each day the PVO has not opened a bank account with a registered banking institution or regulated financial intermediary.

## Offenses for support to political parties

The amendments also introduce new penalties for a range of activities that are considered support to a political party.

A PVO is prohibited from:<sup>36</sup>

- supporting or opposing any political party or candidate in a presidential, parliamentary, or local government election;
- contributing funds to a political party or candidate or otherwise in breach of the Political Parties (Finance) Act;
- denying a beneficiary assistance solely on the basis of that beneficiary's political affiliation, or willfully making assistance conditional on that beneficiary's political affiliation.

<sup>32</sup> PVO Amendment Bill, Section 12 (inserting Schedule (Section 22A) into the PVO Act.

<sup>33</sup> Or the equivalent at the auction rate of exchange ruling on the date the order is issued.

<sup>34</sup> The version of the Bill passed in October 2024 requires a PVO to refuse donations from "illegitimate or illegal sources" (Section 8, inserting new Section 20A into the PVO Act). An earlier version of the Bill had instead required a PVO to refuse donations from "illegitimate or immoral sources." Notably, Section 12 of the PVO Amendment Bill, which provides the penalty for this violation in the version of the Bill passed in October 2024, retains the word "immoral" instead of "illegal." ICNL's interpretation is that the intention is to require PVOs to refuse donations from "illegitimate or illegal sources" and that the use of "immoral" in Section 12 was inadvertent.

<sup>35</sup> Or the equivalent at the auction rate of exchange ruling on the date the order is issued.

<sup>36</sup> PVO Amendment Bill, Section 10 (amending Section 23 of the PVO Act). There is an exception in the provision for PVOs that assist members of a disadvantaged group to become candidates for election to Parliament or to a local authority.



A PVO found guilty of one of these offenses is liable to pay a fine of level 12 (equal to USD \$2,000).<sup>37</sup> National office bearers of the PVO are responsible to pay the fine if the organization does not do so, and are subject to potential imprisonment up to 30 days.

## COMMENTARY

### *Overbroad principles governing PVOs violate international standards:*



The amendments to the PVO Act outline principles that organizations are required to consider, without indicating how these will be enforced. Through overbroad provisions, an organization is required to refuse donations from “illegitimate or illegal sources”; account transparently to its stakeholders including its donors and beneficiaries for the manner in which it distributes its funds and implements its programs; “not to conduct [itself] in any politically partisan manner whether by using its resources to benefit members of a particular affiliation or making any test of the political allegiance of its beneficiaries”; and “to be sensitive generally to the cultural values and norms of the community” in areas of operation. It will be difficult for PVOs to predict what types of conduct might violate these principles. This likely violates the “prescribed by law” test under international law, which requires that any restriction on the freedom of association be sufficiently precise to enable an individual or organization to assess whether their intended conduct would be in breach of the law, and to foresee the likely consequences of any such breach.<sup>38</sup>

### *Restrictions on support to political parties:*

The UN Special Rapporteur on the right to freedom of peaceful assembly and of association emphasizes that civil society organizations such as PVOs 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 and contributing to public debate, monitoring and observing electoral processes, initiating polls and surveys during the voting process, and engaging in voter education, among other activities.<sup>39</sup> While some regulation of campaign financing is legitimate, the Special Rapporteur notes that regulation of civil society organizations’ support of political candidates and parties should be focused on ensuring transparency regarding an organization’s motivation for its support, rather than prohibiting the support.<sup>40</sup>

**The amendments restrict PVOs’ right to the freedom of association by prohibiting them from engaging in any support or opposition of a political party or candidate during an**

<sup>37</sup> PVO Amendment Bill, Section 10 (substituting new Section 6(5) into the Act). Fine levels shall not exceed level 12 for these offenses. Under the Criminal Law (Codification and Reform) (Standard Scale of Fines) Notice, 2023 (Statutory Instrument 14A of 2023), a level 12 fine is equal to USD \$2,000.

<sup>38</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, U.N. Doc. A/HRC/20/27 (2012), at para. 16 (describing the “prescribed by law” test under the International Covenant on Civil and Political Rights).

<sup>39</sup> United Nations General Assembly, *Report of the Special Rapporteur on the rights of peaceful assembly and of association*, U.N. Doc. A/68/299 (2013), Section B (discussing civil society organizations and their role in elections)

<sup>40</sup> *Id.* at para. 46 (“Nevertheless, it is important for any organization which voluntarily supports a particular candidate or a party in an election to be transparent in declaring its motivation, as its support may impact on elections’ results.”)

election. This fails the “prescribed by law” test for permissible restrictions on the freedom of association because “support” and “opposition” are so broadly drafted that it is impossible for an ordinary person to understand the prohibited behaviors. For example, the state could interpret the provision to prohibit a PVO from “supporting” an electoral candidate by providing legal services when the candidate has been arrested or by providing a candidate with talking points on a topical issue during an outreach meeting. The Special Rapporteur has specifically voiced concern that states will use regulations on organizations’ engagement in “political” activities to prohibit organizations from undertaking legitimate good governance and rule of law initiatives and to silence government critics.<sup>41</sup>

---

<sup>41</sup> *Id.* at para. 44.

# 6

## REVIEW

### and Understand the Government's New Enforcement Powers

#### New Office of the Registrar for PVOs:

The amendments create a powerful new Office of the Registrar of PVOs (the Registrar) under the Ministry of Public Service, Labour, and Social Welfare. They also repeal the Act's provisions that previously provided for the PVO Board.

The amendments invest the Registrar with a number of additional powers, including:<sup>42</sup>

- a. determining every application for registration and every proposed cancellation or amendment of a certificate of registration;
- b. hearing representations by any association, organization or institution claiming entitlement to be registered as a PVO;
- c. advising the Minister and registered PVOs on the administration or operation of the Act;
- d. promoting and encouraging the co-ordination of the activities of registered PVOs having similar or related objects;
- e. submitting an annual report to the Minister; and
- f. maintaining a Register of PVOs.

**It is unclear whether the Registrar or Minister will make the annual report public for scrutiny.**

---

<sup>42</sup> PVO Amendment Bill, Section 3 (substituting new Section 3 into the PVO Act).

## Minister's power to suspend a PVO's executive committee:

Under the amendments, if the Minister of Public Service, Labour, and Social Welfare reasonably believes that:<sup>43</sup>

- a PVO has ceased to operate in furtherance of the objects specified in its constitution;
- the maladministration of a PVO is adversely affecting its activities;
- the PVO is involved in illegal activities; or
- it is in the public interest;

the Minister may apply to the High Court to suspend all or any of the executive committee members of a registered PVO and to appoint trustees to run the organization for up to 60 days pending the election of the new executive committee.

The amendments require the Minister to notify the affected PVO. However, while the High Court is deciding on the application to appoint trustees, the Minister may appoint one or more provisional trustees who will have all the same powers as the executive committee. Any decision that the provisional trustees make will not be invalidated if the High Court ultimately refuses to appoint the Minister's suggested trustees.

### COMMENTARY



The Supreme Court of Zimbabwe struck down a similar provision in the PVO Act in 1997 on the grounds that 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 Constitution.<sup>44</sup> While the new Section 21 requires the Minister to make an application to the High Court to suspend the executive committee on notice to the affected PVO, the Minister is still able to replace the executive committee members with provisional trustees not more than seven days before the notice of the application is served on the PVO—this violates the 1997 Supreme Court ruling. If a PVO is threatened with the suspension of its executive committee members, it should consult the 1997 Supreme Court decision to determine if its rights have been violated.

<sup>43</sup> PVO Amendment Bill, Section 9 (substituting new Section 21 into the PVO Act).

<sup>44</sup> *Holland & Ors v. Minister of the Public Service & Ors*, 1997 (1) ZLR 186 (S).

# 7

## REVIEW

### the Government's New AML/CFT Powers

The amendments impose new anti-money laundering and countering the financing of terrorism (AML/CFT) measures on the PVO sector:

#### PVO sector risk assessment:

The Minister of Public Service, Labour, and Social Welfare, in collaboration with the Financial Intelligence Unit, must undertake a “**risk assessment**”<sup>45</sup> of PVOs and other organizations<sup>46</sup> to assess their risk of potential misuse for the below “serious offences”:<sup>47</sup>

- a money laundering offense;
- a terrorist financing offense;
- a terrorist act;
- offenses for which the penalty is death or life imprisonment;
- offenses for which the penalty is imprisonment of four years or more, or less than four years without the option of a fine; and
- offenses under the laws of foreign States that would also constitute offenses in Zimbabwe.

The PVO sector risk assessment must take place at least once every five years.

#### Power to designate “high-risk” entities:

The Minister is empowered to designate any type of legal entity as being “high risk” or vulnerable to misuse for purposes of funding terrorism, terrorist organizations or terrorist causes.<sup>48</sup>

<sup>45</sup> A risk assessment is a process by which jurisdictions to review the adequacy of laws and regulations related to non-profit organizations, such as PVOs, identified as being vulnerable to terrorist financing abuse. The Financial Action Task Force (FATF), the global inter-governmental money laundering and terrorist financing watchdog, requires governments to conduct a risk assessment of the non-profit sector. See FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Updated November 2023), p. 62.

<sup>46</sup> Organizations that are in the list of organizations excluded from the PVO Act's definition of PVO may still be subject to the risk assessment process (see “Determine if the Act Applies to Your Organization” above for a discussion of this list).

<sup>47</sup> PVO Amendment Bill, Section 9 (substituting new Section 22 into the Act).

<sup>48</sup> *Id.*

A designated entity must register as a PVO under the Act. A designated entity that fails to register is liable to pay a fine up to level 14 (currently equal to \$USD 5,000).<sup>49</sup> Members of the PVO's governing body are responsible for the same fine or, alternately, to potential imprisonment up to 10 years.

The amendments also allow the Minister to “prescribe such additional or special requirements, obligations or measures not inconsistent with the Act” to a high-risk entity to mitigate such risk.<sup>50</sup> These measures may include limitations on banking or transfer of funds, among others. If a designated entity fails to comply with any prescribed requirements, the Minister may suspend or revoke the entity's registration or remove its director, trustee, employee, or other office holder.

A designated entity has the right within fourteen days of a designation to make written representations to the Minister to have the designation set aside or amended on the basis that (a) the designation was made in error; or (b) the measures specified by the Minister to mitigate the identified risk or vulnerability are unreasonable or disproportionate in relation to the identified risk or vulnerability. The Minister may, on written notice to the organization or institution concerned, reject or accept, conditionally or unconditionally such representations.<sup>51</sup>

## COMMENTARY



It is a good practice for governments to consult with PVOs and other non-profit entities in the risk assessment process, as these actors can share their knowledge about how PVOs seek, receive, distribute, and spend money, which can help the government to identify organizations most vulnerable to ML/TF abuse while avoiding excessive AML/CFT restrictions on PVOs. The amendments do not require the Minister to engage PVOs in the risk assessment process but PVOs may wish to monitor for and seek opportunities to participate in the process.

The amendments widen the scope of “risk identification, appreciation and assessment” beyond assessing vulnerability to ML/TF misuse. The government will be able to assess the risk of potential misuse of organizations for “serious offences.” By failing to link the “serious offences” to ML/TF, almost any organization can be classified as at risk, even for more trivial and non-ML/TF related offences.

<sup>49</sup> PVO Amendment Bill, Section 9 (substituting new Section 22 into the Act). Fine levels shall not exceed level 14 for this offense. Under the Criminal Law (Codification and Reform) (Standard Scale of Fines) Notice, 2023 (Statutory Instrument 14A of 2023), a level 14 fine is equal to USD \$5,000.

<sup>50</sup> PVO Amendment Bill Section 9 (substituting new Section 22(2) into the Act).

<sup>51</sup> PVO Amendment Bill, Section 9 (substituting new Section 22 into the Act).

# 8

## REMEMBER

### the Rules on Penalties for Violations of the Act

The PVO Act specifies the following general offenses and penalties:<sup>52</sup>

- A person who collects or instructs another to collect contributions for a PVO, without authorization from the PVO itself or the Registrar of PVOs, is liable to a fine up to level 5 (currently equal to USD \$200<sup>53</sup>) or imprisonment up to six months, or both.
- A person who collects contributions for an unregistered PVO is liable to the same penalty.
- A person who falsely represents to the public that he or she is associated with a PVO is liable to a fine up to USD \$100 or imprisonment up to three months, or both.
- A person who knowingly submits material false information in connection with a PVO's application to register or to alter its name is liable to a fine up to USD \$200 or imprisonment up to six months, or both.

Notably, the amendments do not change the language in the Act<sup>54</sup> providing the above penalties. However, the Bill separately provides penalties for collecting contributions for an unregistered PVO in new provisions, as well as other registration violations, that are much steeper than the Act's original penalties (see "Ensure Your Organizations Is Properly Registered" above). PVOs may wish to seek clarification about the current level of penalties.

<sup>52</sup> PVO Act, Section 23.

<sup>53</sup> *Id.*

<sup>54</sup> PVO Act, Section 23(1)-(3).

## New civil penalty procedure:

In addition to monetary fines and terms of imprisonment for various offenses under the Act,<sup>55</sup> the amendments introduce a new procedure by which the Registrar may issue such civil penalty orders against a PVO for specified civil defaults:

- **Failure to amend registration particulars or re-register if there has been a “material change”:** USD \$100 for each day up to 90 days during which the PVO is non-compliant.
- **Receiving any donation from an illegitimate or illegal source:** USD \$100<sup>56</sup> for each day the PVO is non-compliant, up to 90 days.<sup>57</sup>
- **Failure to use formal channels for the transmission of its funds:** A combination of: (a) a fixed penalty of USD \$1,000;<sup>58</sup> (b) five percent of the outstanding amount of the fixed penalty for up to 90 days; (c) an order to open a bank account with a registered banking institution or other regulated financial intermediary; and (d) a penalty of USD \$100 for each day the PVO has not opened a bank account with a registered banking institution or regulated financial intermediary.

Upon issuance of a civil penalty order, a PVO has the burden to demonstrate that the order was issued in error.

### COMMENTARY



The Registrar could abuse the civil penalty order to arbitrarily target PVOs, since the burden is on the PVO to show that it has not violated the PVO Act, rather than on the Registrar to show that the PVO has committed a violation. This process violates the international best practice for the burden of proof relative to sanctions against organizations to always be on the state.<sup>59</sup> It is considered a best practice for states to avoid imposing monetary penalties for violations of laws governing organizations; rather, the immediate remedy should be compliance with the requirement. Sanctions such as monetary penalties should only be applied after the state issues a warning and provides a reasonable period of time for the organization to comply with the law. While it is reasonable for the Registrar to have powers to ensure that organizations comply with the PVO Act, these powers must align with Zimbabwe's international legal obligations to protect and promote the right to the freedom of association.

<sup>55</sup> Where relevant, the penalties for violations discussed in this practical guide are noted in the applicable section.

<sup>56</sup> Or the equivalent at the auction rate of exchange ruling on the date the order is issued.

<sup>57</sup> As noted above, ICNL's interpretation is that the intention is to require PVOs to refuse donations from "illegitimate or illegal sources," although the provision specifying the penalty for non-compliance appears to inadvertently retain the word "immoral" from an earlier draft of the PVO Amendment Bill.

<sup>58</sup> Or the equivalent at the auction rate of exchange ruling on the date the order is issued.

<sup>59</sup> African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 61.





1660 L Street NW, Suite 600, Washington, DC 20036 USA  
[www.icnl.org](http://www.icnl.org) | [facebook.com/ICNLAlliance](https://facebook.com/ICNLAlliance) | [twitter.com/ICNLAlliance](https://twitter.com/ICNLAlliance)