



# Zimbabwe Lawyers for Human Rights

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The Financial Action Task Force

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Dear Sir/Madam,

**RE: Gazetting of the Private Voluntary Organisations Amendment Bill – Restrictions to Civic Space and Provision of Humanitarian Services in Zimbabwe**

Zimbabwe Lawyers for Human Rights (ZLHR) is a law-based not-for-profit organisation that has an objective in fostering a culture of human rights, constitutionalism and upholding the rule of law in Zimbabwe. Kindly note our interest.

## 1. Background to our request

We write to express our concern that the Zimbabwean government has recently gazetted the Private Voluntary Organisations Amendment Bill 2021 (the PVO Bill), on 5 November 2021. We have analysed its contents and strongly believe that it is contrary to international human rights and Financial Action Task Force (FATF) standards. If passed into law, these amendments will have far-reaching implications for the human rights, humanitarian, and development sectors, and will result in the closing down of civic space.

- 1.1 The Bill has been introduced under the auspices of complying with the FATF recommendations. Zimbabwe has been placed under increased monitoring by the East and Southern Africa Money Laundering Group (ESAAMLG) since October 2018 and is currently rated as 'partly compliant' with Recommendation 8 on non-profit organisations.
- 1.2 We are aware that the FATF has identified activities of Non-Profit Organisations (NPOs) (in the context of Zimbabwe these may be not for profit charitable organisations including non-government organisations, private voluntary organisations, trusts, common law *universitas* associations, faith-based organisations, and community-based organisations) as potentially posing a risk of abuse for money laundering and funding of terrorist organisations. Of the 40 Recommendations/ Standards, that your institution FATF has developed, Recommendation 8 is the standard for NPO regulation. In terms of Recommendation 8, governments are required to:

“...review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse...”

Fostering a Culture Of Human Rights in Zimbabwe

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Further, in terms of Immediate Outcome 10.2, governments are required to show that they have:

“...implemented a targeted approach, conducted outreach, and exercised oversight in dealing with NPOs that are at risk from the threat of terrorist abuse.”

1.3 Deficiencies identified by ESAAMLG include the need for risk-based assessments, strategies, and outreach with the sector, and for policies promoting accountability and good financial governance. However, the proposed Bill does not address these. It does not provide for a proportionate targeted risk-based approach in consultation with the sector to identify and address any risks. The most concerning provisions of the Bill are:

- a) Increased executive control over registration and operations of all non-profit organisations (NPOs) by compelling them to register as Private Voluntary Organisations (PVOs) if they will be receiving donations from the public or from outside the country. NPOs are not opposed to regulation, but there is sufficient legislation to regulate the sector. Additionally, there are already existing self-regulation initiatives, which NPOs would welcome support to strengthen, to maintain their independence from the executive considering their critical watchdog role.
- b) Criminalisation of non-profit organisations (NPOs) for “supporting” or “opposing” any political party or candidate, through funding or otherwise, effectively criminalising civic engagement in political processes. It is not clear what a provision on engagement in political processes has to do with anti-money laundering, financing terrorism, or furthering the FATF standards, if at all;
- c) Unfettered unilateral powers given to the Minister of Public Service, Labour and Social Welfare to designate any NPOs deemed to be at “high risk” or “vulnerable to” terrorism abuse in terms of undetermined criteria. This designation process does not provide for a FATF-compliant risk-based assessment in consultation with NPOs. (There is a real danger that this designation process can be abused and could result in organisations working in sensitive areas such as human rights and governance being arbitrarily designated);
- d) Special measures imposed on such designated organisations and allowing for the Registrar of PVOs to summarily revoke licencing without due process. It also gives the Minister power to prescribe special measures to order the removal of NPO employees, office bearers of the designated organisations, effectively dismissing these employees without following due process as required under the Labour Act.
- e) Special measures imposed on designated organisations will allow for the Financial Intelligence Unit, *or* other competent authority as may be prescribed, to order that PVOs provide access to information maintained by the organisation. The type of information that will be accessed is not determined. This is an unjustifiable interference in the internal affairs of any organization. NPOs already produce annual audited accounts and reports.
- f) Wide discretionary powers given to the Minister to issue regulations for the disclosure of foreign funding received by PVOs from outside Zimbabwe, to be provided in their application for registration and audit report. This provision violates freedom of association. Receiving legitimate foreign funding should not be a negative condition in the registration or auditing processes.
- g) Requirement for NPOs to apply for approval for “material changes” to their organisation, including for minor changes to an internal constitution, with powers for the Registrar to reverse such changes and deregister an organisation; and
- h) Ministerial powers to arbitrarily suspend and replace an organisation’s executive committee with unilaterally appointed provisional trustees that are paid by the funds of the organisations, can run the affairs of the organisation, and can even acquire and dispose of its funds and assets.



1.4 ZLHR is concerned that the FATF standards are now being used by the government of Zimbabwe as a justification to introduce this authoritarian Bill, which will result in many unintended consequences, including over-regulation and undue targeting of all non-governmental organisations without a proportionate, risk-based approach. This approach by the government actors is contrary to FATF guidance and Recommendation 8. The NPO sector is already sufficiently regulated as highlighted below.

## 2. Basis of the request for intervention

Zimbabwe already has an adequate regulatory framework of laws relating to money-laundering and counter-terrorism, which can easily be applied to the sector. This framework includes several laws, policies and practices that seek to prevent money laundering and financing terrorism, as well as punish those involved in the crimes of money laundering or terrorism within and outside Zimbabwe. These include:

- i) Criminal Law (Codification and Reform) Act [Chapter 9:23], which has penalties for acts of terrorism within the country,
- ii) Suppression of Foreign and International Terrorism Act [Chapter 11:21],
- iii) Bank Use Promotion and Suppression of Money Laundering Act [Chapter 24:24],
- iv) The Criminal Procedure and Evidence Act [Chapter 9:07] and
- v) Money Laundering and Proceeds of Crime Act [Chapter 9:24].

2.1 In 2020 an amendment to the Money Laundering and Proceeds of Crime Act was gazetted. This law initially came into force in 2013 with the objective of suppressing the abuse of the financial system and to enable the unlawful proceeds of all serious crime and terrorist acts to be identified, traced, frozen, seized and eventually confiscated. The amendment focused on beneficial ownership and unexplained wealth orders. It is pertinent to note that this amendment was passed way after the re-rating of Zimbabwe by FATF in 2019.

2.2 Further there is a Financial Intelligence Unit as established by the MLPC Act, which has the power to issue Directives in terms of section 4 of the Money Laundering and Proceeds of Crime Act. These Directives are issued when necessary or convenient for the better administration and implementation of the Money Laundering & Proceeds of Crime Act and the Bank Use Promotion and Suppression of Money Laundering Act.

2.3 ZLHR is concerned that the government is introducing amendments without:

- a) Using a risk-based approach to identify, assess and understand the money laundering and terrorist financing risks, in consultation with NPOs,
- b) Implementing a targeted approach in relation to NPOs that are at particular risk of terrorist financing and money laundering, as opposed to restricting the whole sector,
- c) Having regard to Zimbabwe's international human rights obligations, particularly in relation to freedom of association, and
- d) Conducting comprehensive outreach and educational programs on FATF, and the need to combat money laundering, financing terrorism, to raise and deepen awareness among NPOs.

2.4 Further, ZLHR is concerned and disturbed that the pretext of complying with the FATF Recommendations is being used to rush through the proposed amendments to the PVO Act, which instead result in the undue targeting of PVOs, and other civil society organisations and non-government organisations. Although the government is purportedly introducing the Bill under the guise of complying with the FATF [Recommendations](#), or FATF Standards, which have been developed to ensure a co-ordinated global response to prevent organised crime, corruption and terrorism, the PVO Amendment Bill is not responding to these recommendations – especially Recommendation 8.



- 2.5 Such a gross misapplication of the FATF standards will inevitably result in less accountability, increased money laundering, and even terrorism, in Zimbabwe, as the deregistration, silencing and incapacitation of NPOs will mean they are unable to play their critical watchdog role of highlighting and challenging illicit financial flows and corruption in the country.

### 3. Requested support from FATF

We understand that the role of FATF is to assist authorities to pursue the illicit financial flows of criminals involved in illegal drug trafficking, human trafficking, terrorism and other crimes, and that FATF also works to stop funding for weapons of mass destruction. Further, the FATF also monitors countries to ensure they implement the FATF Standards fully and effectively, and holds countries to account that do not comply. We also understand that the objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. We hereby request that your team engages the relevant authorities and further guides them on the nature of interventions expected of them, for Zimbabwe to effectively implement legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system, without necessarily undermining the democratic space in Zimbabwe.

We thank you in advance for your urgent attention to this matter.

Yours sincerely,



Roselyn Hanzi

**Executive Director**

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