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COMMENTS

On Zimbabwe's Private Voluntary Organisations Amendment Bill, 2021

Introduction

ICNL is pleased to submit these comments on Zimbabwe's Private Voluntary Organisations Amendment Bill, 2021 ("the Bill"). The government published the Bill in the Zimbabwean Government Gazette dated November 5, 2021 [GN 3107 of 2021]. The Bill would amend the Private Voluntary Organisations Act [*Chapter 17:05*], which governs a form of non-profit organization (NPO) in Zimbabwe.

The Memorandum to the Bill states that the primary aim of the proposed amendments is to comply with the Financial Action Task Force (FATF) Recommendations and strengthen "technical compliance"[1] by addressing deficiencies relating to anti-money laundering and countering the financing of terrorism (AML/CFT) legislation.[2] In its 2016 Mutual Evaluation Report[3] of Zimbabwe the FATF-style regional body, the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) rated Zimbabwe as non-compliant with Recommendation 8, which relates to NPOs.[4] ESAAMLG recommended that authorities should identify NPOs which pose high terrorist financing risks with a view to applying proportionate mitigating controls.[5] In 2019, ESAAMLG re-rated Zimbabwe as partly compliant with Recommendation 8, but

[1] "Technical compliance" means the extent to which a country's legal framework contains measures that combat money laundering and the financing of terrorism and proliferation.
[2] The FATF is an inter-governmental organization that promotes the enforcement of legal and regulatory measures to counter money laundering and terrorist financing. The body has issued 40 recommendations to this end. Compliance with FATF is measured by the "effectiveness" of a country's system in preventing criminal abuse of its financial system, and "technical compliance" of a country's legal framework on combatting money laundering and the financing of terrorism and proliferation. "Technical compliance" means the extent to which a country's legal framework contains measures that combat money laundering and the financing of terrorism and proliferation.

[3] FATF members undergo periodical mutual evaluations to analyze the member's compliance with FATF standards.
[4] Recommendation 8 states that a country should review the adequacy of laws and regulations that relate to NPOs which the country has identified as being vulnerable to terrorist financing abuse, and apply focused and proportionate measures, in line with the risk-based approach, to such NPOs to protect them from terrorist financing abuse.
[5] ESAAMLG, *Zimbabwe: Mutual Evaluation Report* (September 2016), para. 19.

noted that Zimbabwe's risk assessment of the NPO sector was not comprehensive enough to identify a subset of organizations falling within the FATF definition of NPOs that are at risk for terrorist financing and money laundering.[6] Zimbabwe remains under increased monitoring by FATF as of June 2021.[7]

The Bill contains several concerning provisions that either do not comply with FATF Recommendation 8 or undermine the right to freedom of association for private voluntary organizations (PVOs). These include:

- An overbroad risk assessment process that does not comply with FATF Recommendation 8. This includes the assumption that all PVOs might be at risk of money laundering or terrorism financing (ML/TF), and the exclusion of civil society from the risk assessment processes;
- The Minister has broad discretion to designate any type of entity as at "high risk" for terrorist financing and subject those entities to AML/CFT measures, which could undermine those entities' ability to freely operate;
- The Minister has broad discretion to replace a PVO's executive committee with provisional members, which allows the Minister to interfere with a PVO's internal affairs. This provision is a re-introduction of a provision that was struck down as unconstitutional by a Supreme Court Case in 1997;
- PVOs may be required to re-register with the Registrar of PVOs when they make small organizational changes, which provides the government with opportunities to refuse registration to PVOs that work on sensitive issues.
- The Minister has broad discretion to require trusts registered with the High Court to stop collecting public contributions, including from outside the country, and to register under the PVO Act. This imposes double registration and restricts funding, which both violate best practices.
- The PVO Board has overbroad power to cancel an organization's registration where the organization supports or opposes a political party or candidate in an election.

[6] ESAAMLG, *Zimbabwe: Technical Compliance Re-Rating* (September 2019), para.23
[7] https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-june-2021.html

International Law

ANTI MONEY-LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (AML/CFT) STANDARDS

The FATF's Recommendation 8 states that countries must (1) review the adequacy of laws and regulations that relate to NPOs which the country has identified as being vulnerable to terrorist financing abuse and (2) apply focused and proportionate measures, in line with a risk-based approach, to those non-profit organizations.

FATF explains that in the context of Recommendation 8, an "NPO" is a legal entity or organization that primarily engages in raising or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works."[8] Thus, FATF does not consider Recommendation 8 to apply to the entire NPO sector. Rather, FATF explains that countries must undertake a "risk-based" approach to regulating those NPOs that meet the FATF definition.

A "risk-based approach" requires countries to identify the types of organizations most at-risk for TF (a subset of NPOs, as defined for FATF purposes), and adopt targeted measures to address these specific risks, rather than broadly monitoring and restricting all NPOs. FATF explicitly revised Recommendation 8 in 2016 to counter the trend of overbroad restrictions on the non-profit sector due to anti-money laundering and anti-terrorism policies.

The FATF has specifically noted that "[m]easures adopted by countries to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities… Actions taken for this purpose should, to the extent reasonably possible, avoid any negative impact on innocent and legitimate beneficiaries of charitable activity."[9] Additionally, in its own 2014 study, FATF found that NPOs engaged in "service activities" are most at risk of terrorist financing abuse, and explicitly noted that NPOs engaged in "expressive activities" such as programs related to interest representation and advocacy were not at high risk of abuse.[10]

Over-regulation of the NPO sector on the basis of addressing ML/TF threats has manifested in several ways, including the tightening of regulations of the non-profit sector, the misuse or selective application of AML/CFT laws to clamp down on NPOs and their activities, and the adoption of burdensome reporting and disclosure requirements on the entire non-profit sector rather than solely for high-risk organizations. FATF has recognized the problem of overregulation of the non-profit

[8] Financial Action Task Force, *Combating (sic) the Abuse of Non-Profit Organizations (Recommendation 8)*, available at https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organizations.pdf, at page 7.
[9] Financial Action Task Force, *Best Practices Paper on Combating The Abuse of Non-Profit Organisations* (June 2015), para. 7(c) (describing paragraph 3 of the FATF Interpretive Note on Recommendation 8).
[10] Financial Action Task Force, *Combating the Abuse of Non-Profit Organizations (Recommendation 8)*, para. 16.

sector by states by introducing a new workstream to specifically address the negative impact of poorly implemented AML/CFT measures.[11]

United Nations experts agree that states must not abuse the necessity of combating terrorism by resorting to measures that unnecessarily restrict human rights.[12] The law must provide clear safeguards to prevent abuse (of the limitations) and, if abuses do occur, to ensure that remedies are provided. In relation to civic space concerns, the UN Special Rapporteur on the rights to peaceful assembly and of association specifically recommends that states ensure the protection of the freedom of association when implementing anti-money laundering and financing of terrorism policies.[13]

THE RIGHT TO THE FREEDOM OF ASSOCIATION

Article 22 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to the freedom of association.[14] Under the ICCPR, restrictions on the right to freedom of association must be (1) prescribed by law, (2) necessary in a democratic society, and (3) in furtherance of at least one of four clearly-defined interests: national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. These limited circumstances must be "construed strictly; only convincing and compelling reasons justify restrictions on…freedom of association."[15]

To meet the ICCPR's requirement that a restriction be "prescribed by law," the restriction must be sufficiently precise to enable an individual or NPO to assess whether their intended conduct would be in breach of the law, and to foresee the likely consequences of any such breach.[16] To meet the requirement that a restriction be "necessary in a democratic society," the restriction must be proportionate to one of the legitimate aims enumerated above. A restriction is proportionate where it is the least restrictive means required to achieve the purported aim. [17]

The African Charter on Human and Peoples' Rights (ACHPR) similarly protects the right to associate.[18] In its *Guidelines on Freedom of Association and Assembly in*

[11] See Financial Action Task Force, "Speech at the Chatham House Illicit Financial Flows Conference, 1-2 March 2021," available at http://www.fatf-gafi.org/publications/fatfgeneral/documents/chatham-house-march-2021.html.
[12] United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/61/267* (2007), para. 11.
[13] See *Report of the Special* Rapporteur, supra note 5, at para. 70.
[14] Zimbabwe acceded to the ICCPR in 1991.
[15] Sidiroupoulos v. Greece, 4 Eur. Ct. H.R. 500 (1998); United Communist Party v. Turkey, 4 Eur. Ct. H.R. 1 (1998); Socialist Party and Others v. Turkey, Application No. 21237/93 (1998), para. 50. See also Freedom and Democracy Party v. Turkey, Application No. 23885/94 (1999); Refah Partisi (The Welfare Party), Erbakan, Kazan, and Tekdal v. Turkey, Application Nos. 41340/98, 41342/98, 41343/98, and 41344/98 (2001).
[16] *Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, Maina Kiai*, U.N.DOC A/HRC/20/27 (2012), at para. 16.
[17] *Id.* at para. 17.
[18] ACHPR, art. 10. Zimbabwe ratified the ACHPR in 1986.

Africa (ACHPR Guidelines on FOAA), the African Commission on Human and Peoples' Rights (African Commission) has clarified that the ACHPR requires that restrictions on the right to association meet the same conditions prescribed under the ICCPR.[19]

Analysis

RISK ASSESSMENTS FOR MONEY-LAUNDERING AND TERRORIST FINANCING DO NOT INCLUDE CONSULTATION WITH PVOS

ISSUE: The proposed new Section 22(2) requires the Minister to undertake "risk assessments" of PVOs, but the Minister is not required to engage PVOs in the risk assessment process.

ANALYSIS: FATF states that "countries should work with NPOs to develop and refine best practices to address terrorist financing risks and vulnerabilities";[20] this includes consulting NPOs during the risk assessment process.[21] Section 22(2) does not require the Minister to engage PVOs in the risk assessment process, which contravenes FATF's recommendation.

From a practical standpoint, engaging PVOs in risk assessments of the sector will help Zimbabwe identify the types of PVOs that are most at risk of terrorist financing and money laundering, and apply targeted measures to combat these risks. Representatives of the PVO sector can share their knowledge about how PVOs seek, receive, distribute, and spend money, which can support the Minister and other relevant state actors to identify organizations most vulnerable to money laundering or terrorist financing abuse. Consulting PVOs can help Zimbabwe avoid overbroad AML/CFT rules that restrict legitimate non-profit activities, thus upholding Zimbabwe's obligation to limit restrictions on the right to the freedom of association when applying AML/CFT measures.[22]

RECOMMENDATION: Revise Section 22(2) to require the Minister to consult with PVOs and other forms of NPOs when undertaking a risk assessment of the sector. FATF suggests identifying an actor as the focal point for NPO outreach, such as the PVO

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[19] See African Commission on Human and People's Rights, *Guidelines on Freedom of Association and Assembly in Africa ("ACHPR Guidelines on FOAA")*, para. 24, available at http://www.achpr.org/instruments/freedom-association-assembly/.
[20] FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Updated June 2019), pg. 54.
[21] See FATF, *Terrorist Financing Risk Assessment Guidance* (July 2019), paras. 68 (noting that in conducting a risk assessment, jurisdictions should consider inputs from civil society representatives, including sector or organizational self-risk assessments, and citing Malaysia's inclusion of NPOs and academics when validating a risk assessment of NPOs), 72 (citing as a good practice Australia's convening of round-table meetings with NPO members to gather insights about the sector's risk of terrorist financing), and 73 (noting "ongoing engagement with the NPO sector" as a "key element" of FATF Recommendation 8, and citing Kosovo and Kyrgyzstan's solicitation of NPO input during their risk assessments as a best practice).
[22] *Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, Maina Kiai*, U.N.DOC A/HRC/20/27 (2012), at para. 70.

regulator, tax authority, or other relevant body. FATF also recommends that the focal point engage in continuous, two-way dialogue with the NPO sector, including organizations, coalitions, self-regulatory bodies, and donor organizations.[23]

THE MINISTER MAY DESIGNATE ANY TYPE OF LEGAL ENTITY AS AT "HIGH RISK" WITHOUT UNDERTAKING A RISK ASSESSMENT

ISSUE: The proposed new Section 2(3) allows the Minister to designate any type of legal entity as at high risk of or vulnerable to abuse for terrorist financing. The provision does not require the Minister to undertake a risk assessment before doing so. Section 2(3)(b) also allows the Minister to "prescribe such additional or special requirements, obligations or measures" to a high-risk entity, which additional measures are not further described.

ANALYSIS: As noted above, to comply with the FATF Recommendation 8, a country must undertake a risk assessment before regulating NPOs. Section 2(3) does not require the Minister to undertake a risk assessment before designating a type of legal entity as "high risk," and thus grants the Minister broad discretion to do so. The Minister's broad discretion to name an entity as "high risk" is concerning because of the Minister's power to "prescribe such additional or special requirements, obligations or measures" to a high-risk entity, and these additional measures are not further described. The ambiguity surrounding these additional measures provides the Minister with broad powers to place AML/CFT requirements on designated high-risk entities, such as limitations on banking and transfers of funds, or reporting requirements, which can infringe on those organizations' ability to pursue legitimate non-profit activities, and thus undermine the right to the freedom of association. Such a restriction on the freedom of association would not be "necessary in a democratic society," because applying AML/CFT measures without a risk assessment is not the least restrictive means to further a legitimate aim such as national security.

RECOMMENDATION: Amend Section 2(3) to require the Minister to undertake a risk assessment in consultation with relevant civil society stakeholders (such as PVO representatives) in order to designate a type of entity as at "high risk" or "vulnerable" to misuse for terrorist financing. Amend Section 2(3)(b) to explicitly list the types of measures that the Minister may apply to "high risk" entities.

[23] See Financial Action Task Force, *Combating the Abuse of Non-Profit Organizations (Recommendation 8)*, paras. 25-27.

THE MINISTER HAS BROAD DISCRETION TO CONTROL A PVO THROUGH REPLACING A PVO'S EXECUTIVE COMMITTEE MEMBERS WITH PROVISIONAL MEMBERS

ISSUE: The proposed new Section 21 states that where the Minister determines that "it is necessary to do so in the public interest" or where the "maladministration of the organization is adversely affecting the activities of the organization," among other grounds, the Minister may make an application to the High Court to suspend all or any of the members of the executive committee 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. 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. The High Court does not have to approve the provisional trustees. Any decision that the provisional trustees make will not be invalidated if the High Court ultimately refuses to appoint the Minister's suggested trustees.

ANALYSIS: First, 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.[24] While Section 21 requires the Minister to make an application to the High Court to suspend the executive committee, the Minister is still able to replace the executive committee members with provisional trustees without court oversight—this violates the spirit of the 1997 Supreme Court ruling.

Second, under international best practice, public authorities shall not interfere with organizations' choices of managing officers unless those persons are barred by national law from holding the positions in question on a basis of legitimate grounds as interpreted under international human rights law.[25] Section 21 violates this best practice as it allows the Minister to appoint executive committee members of a PVO through naming provisional trustees, who do not have to be court-ordered. This interference with the internal governance of PVOs restricts the freedom of association because the provisional trustees can exercise all powers available to a PVO's executive committee, which could include determining a PVO's priorities and action plan or hiring and firing staff.

Section 21 fails the "prescribed by law" test for permissible restrictions on the freedom of association because the grounds for suspending a PVO's executive committee and appointing provisional trustees are so vague that it is difficult for a person to predict

[24] *Holland & Ors v. Minister of the Public Service & Ors*, 1997 (1) ZLR 186 (S).
[25] ACHPR Guidelines on FOAA, para.36(c).

the circumstances in which the Minister may suspend committee members and appoint trustees. The Minister has broad discretion to determine that suspension and replacement of a PVO's executive committee is "necessary in the public interest." It is also unclear how the state would determine that the "maladministration of the organization is adversely affecting the activities of the organization."

The Bill should not grant the Minister unchecked powers to replace the executive committee members with provisional trustees.

RECOMMENDATION: Remove Section 21, or revise it to allow the PVO's members to nominate a provisional trustee.

PVOS MAY BE REQUIRED TO RE-REGISTER WHEN THEY UNDERTAKE MINOR ORGANIZATIONAL CHANGES AND REGISTRAR HAS BROAD POWERS TO REVERSE THE CHANGES OR REJECT THE RE-REGISTRATION APPLICATION

ISSUE: The proposed new Section 13A requires a PVO to re-register with the Registrar of PVOs where the PVO has adopted a "material change," where "material change" means:

(a) Any change in the constitution regarding the distribution of assets when a PVO dissolves;

(b) Any change in the ownership or control of the private voluntary organisation; or

(c) Any variation of the capacity of the PVO to operate as a PVO.

Upon receiving the re-registration application, the Registrar may reject the application and order reversal of the material change or reject the application and require the applicant to re-register anyway.

ANALYSIS: Organizations should not be required to register more than once.[26] 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 that work on sensitive or controversial issues. In fact, 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. This restriction on the freedom of association does not seem to further a legitimate aim—it is unclear how requiring re-registration upon a material change in a PVO would further national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. Additionally, even if re-registration furthered one of these aims, Section 13A is not "necessary in a democratic society"

[26] ACHPR Guidelines on FOAA, para. 17.

because it so broadly defines "material change" that a PVO would have to re-register after undertaking any range of small changes; for example, the provision could be interpreted to require a PVO to re-register if it changes its internal voting structure as codified in its constitution, because this is a change in the constitution; it could also have to re-register if it replaces several members of its board of directors when their terms expire, because this could constitute a change in the "control" of the organization.

Requiring re-registration after such small changes is not the least restrictive way to further a legitimate aim. Rather, a PVO could be required to notify the Registrar if it has changed its structure to include activities that undermine its ability to operate as a PVO, such as engaging in for-profit activities whose proceeds are distributed to members. 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. Sections 10 through 14 of the principal Act already encompass a similar approach, though they would better comply with Zimbabwe's obligations under international law if they were revised so that the Registrar must receive a court order to de-register a PVO, and the PVO has an opportunity to appeal the de-registration before the High Court, among other modifications.[27]

RECOMMENDATION: Remove the requirement to re-register a PVO upon a "material change."

DOUBLE REGISTRATION OF TRUSTS REGISTERED BY THE HIGH COURT AND RESTRICTIONS ON THEIR ABILITY TO FUNDRAISE

ISSUE: Trusts registered with the High Court are currently exempt from the provisions of the PVO Act. The proposed Section 2(4) empowers the Registrar, where (s)he has "reasonable suspicion … [that the trust] is collecting contributions from the public or outside the country for the purposes outlined in [the definition of a PVO in the Act]" to make trustees swear under threat of imprisonment not to collect contributions from the public or outside the country, and to register as a PVO within 30 days of receiving notice from the Registrar. The purposes mentioned in the definition of a PVO include the provision for material, mental, physical and social needs of persons or families, rendering charity to people in distress, and the provision of funds for legal aid. Most human rights organizations and those providing legal and medical support services in

[27] This is not a complete analysis of the relevant provisions in the principal Act.

Zimbabwe are currently registered as trusts with the High Court and are exempt from regulation under the PVO Act.

ANALYSIS: The Act provides overbroad powers to the Registrar to stop trusts fundraising from the public and outside the country without a reason. The ability of an organization to "seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources" is integral to the right to freedom of association under international law. The restriction on fundraising is not a permissible restriction to this right because it fails the "prescribed by law" test under ICCPR Article 22, which requires restrictions to be sufficiently clear to allow organizations to predict whether they will be prevented from public fundraising.

This provision also effectively requires trusts to register twice: once with the High Court, and once under the PVO Act, which also mandates registration. As a best practice, newly adopted laws should not require previously registered organizations to re-register so that existing organizations do not face arbitrary rejection or delays of registration that hinder their activities.[28] This requirement also raises the risk of the organization having to report to two competing regulatory bodies.

RECOMMENDATION: Remove the proposed Section 2(4).

PROHIBITION OF "SUPPORTING OR OPPOSING" ANY POLITICAL PARTY OR CANDIDATE IN AN ELECTION

ISSUE: A new Section 10(e1) of the principal Act prohibits PVOs from supporting or opposing any political party or candidate in a presidential, parliamentary, or local government election. It also emphasizes that PVOs are subject to Section 7 of the Political Parties (Finance) Act [Chapter 2:12], which prohibits foreigners from soliciting funding on behalf of a political party or political candidate.

ANALYSIS: The Special Rapporteur on the right to freedom of association and of peaceful assembly 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.[29] 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

[28] A/HRC/20/27, para. 62
[29] United Nations General Assembly, Report of the Special Rapporteur on the rights of peaceful assembly and of association, A/68/299 (2013), Section B (discussing civil society organizations and their role in elections)

ensuring transparency regarding an organization's motivation for their support, rather than prohibiting the support.[30]

Section 10(e1) restricts 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 election. This provision 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 through providing legal services when the candidate has been arrested or through 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.[31] The vagueness of the prohibition of "support" and "opposition" of a political party or candidate under Section 5 would grant the state broad discretion to do so.

RECOMMENDATION: Remove the proposed Section 10(e1).

OTHER ISSUES

- The proposed new Section 22 states that a risk assessment will be in accordance with the criteria furnished from time to time by the FATF, but the risk assessment process is not further clarified in the Bill. Recognizing that the risk assessment format may vary based on countries, we are sharing FATF's guidance on risk assessments, also noted in analyses above: National Money Laundering and Terrorist Financing Risk Assessment; Terrorist Financing Risk Assessment Guidance.
- In addition to the imposition of monetary fines and terms of imprisonment for various offences under the Act, the Schedule introduces a new procedure by which the Registrar may issue civil penalty orders against a PVO for violating the PVO Act. Upon issuance of a civil penalty order, a PVO has the burden to demonstrate that the order was issued in error. The Registrar could abuse the civil penalty order to arbitrarily burden 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 violated the PVO Act. This process violates the international best practice for the burden of proof relative to sanctions against organizations to always be on the

[30] 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.")
[31] Id. at para. 44.

state.[32] Moreover, 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.[33] 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.

Conclusion

ICNL stands ready to provide further assistance as required.

[32] ACHPR FOAA Guidelines, para. 61.
[33] ACHPR FOAA Guidelines, para. 59(b).