



HELENSUZMAN
FOUNDATION

SUBMISSION TO THE STANDING COMMITTEE ON FINANCE

in respect of

**GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING
TERRORISM FINANCING) AMENDMENT BILL (B18B-2022)**

made by

THE HELEN SUZMAN FOUNDATION

22 NOVEMBER 2022

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Introduction

1. The Helen Suzman Foundation (“HSF”) welcomes the opportunity to make submissions to the Standing Committee on Finance (“Committee”) on the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill B18B-2022 (“the Bill”). The HSF sees this engagement as a way of fostering critical yet constructive dialogue between civil society and government.
2. The HSF is a non-governmental organisation whose main objective is to promote and defend the values of our constitutional democracy in South Africa, focusing on the rule of law, transparency and accountability. The HSF’s interest in participating in these proceedings, centres on our commitment to the constitutional obligations of achieving equality and advancing human rights and freedoms.
3. In its comments on the proposed Bill to amend the Nonprofit Organisations Act 71 of 1997 (“the Act”), the HSF wishes to contribute to the efficient operation of the Act, as non-profit organisations (“NPOs”) perform a vital role in the social and political arena in South Africa. Therefore, it is crucial that the relevant governing legislation provides a suitable and practical framework for their functioning.
4. The HSF understands the urgency of ensuring compliance with the Financial Action Task Force (“FATF”) to avoid “grey-listing”. However, the HSF notes that South Africa’s Mutual Evaluation Report of the Financial Action Task Force’ (“FATF Report”) was published in October 2021, and it is not at all clear why this matter is only now receiving the required attention in Parliament.
5. The HSF notes that the public was only given a period of four days (two and a half working days) to make submissions in respect of this envisaged legislation.
6. The HSF would like to draw the Committee’s attention to the submissions made by the HSF in respect of the General Laws (Anti-Money Laundering and Combating

Terrorism Financing) Amendment Bill B18-2022 (“General Laws I”)¹ and the Draft Non-Profit Organisation Amendment Bill (“Draft NPO Bill”).² Given the unrealistically short deadline for submission on the Bill, the HSF requests the above two submissions be read and considered, as far as is applicable, together with this submission.

7. The HSF remains apprehensive about processing the Bill and the Draft NPO Bill in separate proceedings. Consequently, the HSF advocates that the two Bills be withdrawn in order for them to be consolidated. The process must be combined to be more efficient and effective and prevent any contradictory outcomes arising from concurrent processes.
8. In addition, aside from being processed by separate departments, the HSF is unaware of how the proposed amendments in the Bill and the Draft NPO Bill can be reconciled.

Part A: Irreconcilability of the Bill with the Draft NPO Bill.

9. The HSF would like to draw the Committee’s attention to two pertinent points.
10. First, it is unclear how the proposed amendments in the Bill and the Draft NPO Bill can be read together as they offer contradictory amendments to section 12 of the Act.
11. In terms of section 12(1)(b) the Bill requires mandatory registration of NPOs in two instances, where the NPO:
 - a. ‘makes donations to individuals or organisations outside of the Republic’s borders; and

¹ The HSF’s submission can be found [here](#).

² The HSF’s submission can be found [here](#).

- b. provides humanitarian, charitable, religious, educational or cultural services outs of the Republic's borders.'

12. Whereas the Draft NPO Bill provides differently:

- a. Section 12(1): 'Any nonprofit organisation that is not an organ of state *may* apply to the Office of the Registrar for registration'
- b. Section 12(5): 'Any nonprofit organisation, including foreign nonprofit organizations that intend to operate business within the Republic must be registered in terms of this Act before operate and shall be subjected to the provisions of this Act and any other laws of the Republic'
- c. Section 2(f): 'facilitating voluntary registration of nonprofit organisations and compulsory registration for foreign organisations operating within the borders of the Republic of South Africa.'

13. Therefore, as can be seen from above, not only are the registration requirements different between the Bill and the Draft NPO Bill, but the requirements contained in the Draft NPO Bill actually contradict itself.

14. The situation is made worse as the Bill introduces an offence for any NPO that fails to register if it is required to do so.³

15. Secondly, the HSF submits that it is odd and potentially counter-productive that a more integrated process to manage the Bills has not been designed. They are introduced by separate departments, and the Bills and comments received in respect of each will be processed by different committees.

³ The Bill, section 29(4)(b).

16. This concurrent approach to amending the Act cannot be considered efficacious or strategic. Therefore, the HSF submits that an integrated approach should be adopted for the Bills' consideration and processing.

17. The HSF submits that given the absolute lack of clarity and irreconcilability of the amendments to the Act, both Bills must be withdrawn, and consolidated with only one department, either the Committee or the Department of Social Development, responsible for the introduction of a new Bill and the processing of any comments received.

Conclusion

18. The HSF welcomes the opportunity to engage with the Committee in this regard. The HSF's comments are made with the purpose of enhancing the security and independence of NPOs operating within South Africa and, at the same time, of making the monitoring framework more effective where it relates to financial criminal activities.

19. It must be emphasised that NPOs play a vital role in South Africa. Regulation must be narrowly tailored to combat real risk and not be unduly cumbersome or hindering of NPO activity.

20. Therefore, the HSF wishes to register its concern about the inconsistencies between the Bill and the Draft NPO Bill and the processing of the two in separate proceedings. Consequently, the HSF advocates that the two Bills be withdrawn in order for them to be consolidated. The process must be combined to be more efficient and effective and prevent any contradictory outcomes that may arise from the concurrent processes.