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The Department of Social Development

For attention:

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Submission on the Non-Profit Organisation Amendment Bill 2021.

We attach our written submissions in response to the Department of Social Development's call for comments on the Non-Profit Organisation Amendment Bill.

Should you have any queries please contact Chelsea Ramsden (Chelsea@hsf.org.za) and Anton van Dalsen (Anton@hsf.org.za)

Yours sincerely,

Nicole Fritz

Executive Director

Introduction:

1. The Helen Suzman Foundation (“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.
2. The HSF welcomes the opportunity to make submissions to the Department of Social Development on the Non-Profit Organisation Amendment Bill 2021. The HSF sees this engagement as a way of fostering critical yet constructive dialogue between civil society and government.

CLAUSE COMMENTED ON	PROPOSAL	MOTIVATION
Section 4: Establishment of a Directorate for Non-profit Organisations	The introduction of an independent registration body comprising representatives of civil society and which functions independently of government.	Independence in this regard ensures fairness and uniformity in the process of registration. There is always a risk of politicising the registration process in respect of NPOs. Ensuring that there are non-governmental actors involved in the process has many benefits for the legitimacy of the process and will increase buy-in from civil society and the public at large.
Section 8 states that the Minister must designate an employee of the national department as the Director of Non-profit Organisations to be in charge of the Directorate and to perform the other functions conferred on the director by or in terms of this Act or any other law.	This registration body should be as independent from government as possible and as such the Minister should not designate who should be employed as the director thereof. As suggested above, this body should be completely independent from government and should exist separately.	The registration body cannot function independently if the Minister is able to designate its Director. There will not be sufficient checks and balances in place to ensure that this body performs its functions independently of the political will of government.
Section 12 requires compulsory registration of foreign organisations, whereas only voluntary registration is stipulated for NPOs that are not “foreign” organisations.	Registration for both foreign and non-foreign NPOs should be voluntary.	As put forward in the HSF’s submission on the General Laws (Anti-money laundering and Combatting of Terrorism Financing) Amendment Bill (“General Laws Amendment Bill”), ¹ the HSF advocates that these two Bills should be considered together in the legislative process in order to avoid contradictory outcomes or sections within each Bill as they both affect the running of NPOs. This is particularly important for the registration of NPOs

¹ The HSF’s full submission on the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill can be found [here](#).

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		<p>where the General Laws Amendment Bill seeks to make registration compulsory for all NPOs operating within South Africa. Although National Treasury has more recently indicated that registration will only be compulsory for two types of NPOs – those that make donations to individuals or organisations domiciled in a foreign country and NPOs which provide services outside of South Africa’s borders – the General Laws Amendment Bill in its current form requires compulsory registration for all NPOs regardless of international status.</p> <p>Moreover, mandating compulsory registration for all NPOs will place an impossible burden on the newly created Directorate for Non-profit Organisations. This will create further bureaucratic delays for many NPOs. In any event, large numbers of NPOs are already registered with various governmental departments and agencies in order to meet operational requirements for instance, in order to be able to open bank accounts or to provide donors with the relevant tax deduction certificates. It must be anticipated that the burden of registration will fall disproportionately on smaller, less well-resourced NPOs and to the detriment particularly of community-based groups. Carefully crafted measures to address the risk of illicit funding flows will simultaneously balance the imperative of safeguarding a sphere vital to meaningful, broad-based public participation in democracy. As the FATF recommendations underline, it is essential to ‘demonstrate that risk-based measures apply to NPOs at risk of terrorist financing abuse’.² The National Treasury suggestion (referred to above) may offer a solution in this regard.</p> <p>The HSF shares the view of the United Nations Special Representative of the Secretary General on Human Rights</p>

² Financial Action Task Force, ‘International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations’ (2012-2022) para 6(b).

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		<p>Defenders that registration of NPOs should be voluntary.³</p> <p>Although registration might properly be required in order to allow NPOs to access certain benefits, it cannot serve as a barrier to effective and efficient existence of NPOs in the first instance.</p> <p>The UN Special Representative makes the following recommendations with which the HSF seeks to align itself:</p> <ol style="list-style-type: none"> 1. Introduce a system which requires NPOs to declare their existence by delivering basic information rather than compulsory registration. In this manner, NPOs can be tracked and monitored without creating hurdles to their effective functioning. 2. Expedite existing registration processes by introducing the following (with the basic presumption that an NPO is operating legally unless proven otherwise): <ol style="list-style-type: none"> 2.1 Legislated time periods for the adjudication of the application, failing which the NPO would be considered 'legally operative'. 2.2 Similarly, applicants who are denied registration should be supplied with sufficient reasons and failure to provide such should result in the assumption that the NPO is operating legally. As well as effective appeals processes which allow applicants access to an independent court. 2.3 Clear and sufficient guidelines for the registration procedure with step-by-step guidelines which facilitate efficient registration of NPOs. 3. The introduction of an independent registration body comprising a representative of civil society which

³ Hina Jilani 'Human rights defenders: Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms' *UN General Assembly* (1 October 2004) Doc No A/59/401.

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		functions independently of government. 4. Non-discrimination in respect of foreign Human Rights NPOs and the standards imposed on them.