



HELENSUZMAN  
FOUNDATION

The Department of Social Development

For attention: Mr Luyanda Mtshotshisa / Mr Luyanda Ngonyama / Ms Mpho Mngxitama

Email: LuyandaMt@socdev.gov.za

LuyandaN@dsd.gov.za

Mphomn@dsd.gov.za

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Dear Mr Mtshotshisa, Mr Luyanda and Ms Mngxitama

**Submission on the Draft Non-Profit Organisation Amendment Bill**

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

Should you have any queries, please contact Sophie Smit ([sophie@hsf.org.za](mailto:sophie@hsf.org.za)) and Basil Mihloti Sherinda ([Mihloti@hsf.org.za](mailto:Mihloti@hsf.org.za))

Yours sincerely,

Francis Antonie

Director



**Submission in response to the Department of Social Development's call for comments on the Nonprofit Organisations Amendment Bill**

**1. Introduction**

The Helen Suzman Foundation ("HSF") welcomes the opportunity to make submissions to the Nonprofit Organisations Amendment Bill, 2021 ("NPO Amendment Bill"). The HSF is a non-governmental organisation whose main objective is to promote and defend the values of our constitutional democracy in South Africa, with a focus on the rule of law, transparency and accountability.

In its submission, the HSF wishes to contribute to the efficient operation of the legislation which governs nonprofit organisations ("NPOs"). NPOs perform an extremely important role in the social and political arena in South Africa and it is therefore crucial that the relevant governing legislation provides a suitable and practical framework for their functioning.

**2. Application for extension of the deadline and condonation of the late submission**

The HSF acknowledges that the proclaimed deadline of 31 October 2021 has passed for the submission of comments on the Draft NPO Amendment Bill. It is noted that a period of only one month had been announced for submissions to be made in respect of this envisaged legislation. It was suggested in a follow-up meeting with the Department of Social Development on 10 November 2021, that if an extension to this limited period is not granted by Cabinet, any subsequent comments and submissions nevertheless be granted condonation to permit the Department of Social Development

to take them into consideration. The HSF therefore requests that its submission benefits from such condonation, which is suggested as appropriate, given the limited period which had originally been made available for submissions.

### 3. The HSF's Submissions

Our comments are set out in the prescribed format below with separate columns for comments, proposals and motivation.

CLAUSE COMMENTED ON	PROPOSAL	MOTIVATION
Clause 1 - Amendment of section 1.	<p>Section 1 needs to provide for the definition of a 'foreign NPO', to the effect that a foreign NPO must be 'an NPO incorporated in terms of the laws of a foreign jurisdiction'.</p> <p>It must also be made clear in Section 1 that a "registered nonprofit organisation" includes a "registered foreign nonprofit organisation."</p>	<p>Since the body of the amended Act is to include "foreign NPOs", it is clear that such NPOs must be defined, to reflect that they are NPOs which are registered in a foreign jurisdiction.</p>
<p>Section 2 requires compulsory registration of foreign organisations, whereas only voluntary registration is stipulated for NPOs that are not "foreign" organisations.</p>	<p>It is the HSF's recommendation that both foreign and domestic NPOs should only need to register voluntarily.</p> <p>Section 2 refers to "foreign organisations", instead of "foreign nonprofit organisations". Section 2 should be amended to reflect the latter, otherwise uncertainty will spread among all foreign organisations (even non-NPOs) as to whether they have to register under the Act.</p>	<p>No reason is provided for differentiating between local and foreign NPOs, in as far as registration is concerned. It is clear that benefits and allowances may only be made available to registered NPOs, in terms of section 11 of the Act. Foreign NPOs would therefore have to register if they wish to receive such benefits and allowances and this would provide sufficient motivation for them to register.</p>

		NPOs play a vital role in South Africa, especially in providing support for vulnerable people. It is therefore vital that they be allowed to operate without unnecessary barriers or obstacles.
<p>Clause 4(c) (Amendment of section 12 of the Act)</p> <p>The Bill provides that Section 12(2)(p) is to read –</p> <p>‘disclose whether a member or office bearer has been previously been found guilty of an offence relating to the embezzlement of money of any non-profit organisations and the status of the conviction’.</p>	<p>That the words [of any non-profit organisation] be deleted and that section 12(2)(p) should therefore read as follows:</p> <p>‘Disclose whether a member or office bearer has been previously been found guilty of an offence relating to the embezzlement of money and the status of the conviction’.</p>	<p>Since NPOs are tasked with handling private and public monies, it is important that those members or office bearers are persons who are capable of being trusted with such responsibility. Therefore, any previous offence relating to embezzlement in any environment should be disclosed and considered in their appointment.</p>
<p>Section 13(2) of the NPO Act.</p> <p>This states that the Director must make a decision as to the application for registration submitted by an NPO within two months after receiving the application.</p>	<p>This section should be amended with relief for an applicant if a director fails to take his decision within two months - for instance, by providing an applicant with direct access to the Arbitration Tribunal.</p>	<p>The directorate has failed, in many instances, to comply with this two-month period with no recourse available to NPOs waiting for registration.</p> <p>This is particularly damaging for voluntary associations who are unable to open a bank account without a registration certificate and it is recommended that a way is found to assist NPOs who are in this situation.</p>

## 5. Conclusion

In conclusion, it is confirmed by the HSF that NPOs play a vital role in South Africa. This means that they must regulated in a manner that provides the authorities with the

necessary comfort as to the way in which they function, whilst at the same time allowing NPOs to operate within a constructive and practical framework. This should apply to both domestic and foreign NPOs.