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Our reference: Draft NPO Bill

Date: 18 November 2022

**The Minister of Social Development
National Department of Social Development
PRETORIA**

**For attention: Mr L Mtshotshisa
Mr L Ngonyama
Ms Mpho Mngxitama**

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Honourable Minister,

RE: SUBMISSIONS ON THE DRAFT NONPROFIT ORGANISATIONS BILL, 2021

1. We refer to the above matter and specifically to the notice, published by Honourable Minister Zulu on behalf of the Department of Social Development ("the Department") in the Government Gazette of 19 October 2022, calling for the submission of public comments on the draft Nonprofit Organisations Bill, 2021 ("the Bill/NPO Bill").
2. Cause for Justice ("CFJ") hereby thanks the Honourable Minister and Department for the opportunity to deliver written submissions and participate in the law-making process.

BACKGROUND TO CAUSE FOR JUSTICE AND INTEREST IN BILL

3. CFJ is a non-partisan and apolitical nonprofit human rights and public interest organisation with the primary objective of advancing constitutional justice in South Africa, primarily through participation in the legislative process and governmental decision-making structures, litigation and through creating public awareness on matters of public importance.

CHIEF EXECUTIVE: SA SMIT | NON-EXECUTIVES: EFJ MALHERBE | NC SNYDERS

4. Two of CFJ's five core values give it a particular interest in the Bill, namely (1) the responsible exercise of freedom, and (2) ensuring constitutional state action.
5. Furthermore, as a nonprofit organisation ("NPO") that has opted not to apply for voluntary registration in terms of the Nonprofit Organisations Act, 71 of 1997 ("the NPO Act"), CFJ will be directly affected by amendments to the NPO Act and/or regulatory framework governing the nonprofit sector.
6. Previously, CFJ has engaged Parliament's Standing Committee on Finance in respect of the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill [B18-2022] ("Anti-Money Laundering Bill"),¹ which proposes amendments to *inter alia* the NPO Act, through delivery of:
 - 6.1. (Initial) written submissions on 10 October 2022;²
 - 6.2. Oral submissions on 11 October 2022;³
 - 6.3. Further oral submissions on 18 and 28 October 2022;⁴ and
 - 6.4. Further (substantive) written submissions on 25 October 2022.⁵

¹ PMG Bill History on General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill [B18-2022]. Available at: <https://pmg.org.za/bill/1098/>.

² CFJ (*Initial*) Written Submissions on General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill [B18-2022] (11 October 2022). Available at: <https://causeforjustice.org/wp-content/uploads/2022/10/CFJ-Intention-to-Make-Submissions-on-Anti-Money-Laundering-Bill.pdf>.

³ CFJ Oral Submissions on General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill [B18-2022] (12 October 2022). Available at: <https://causeforjustice.org/wp-content/uploads/2022/10/CFJ-Oral-Representations.pdf>.

Standing Committee on Finance (11 October 2022) at [01:18:29] to [01:29:05]. Available at: <https://www.youtube.com/watch?v=bOr8cxoXaQw>.

⁴ Standing Committee on Finance (18 October 2022) at [02:44:58] to [02:46:56]. Available at: <https://www.youtube.com/watch?v=5tB4Hmv1NkE>.

Standing Committee on Finance (28 October 2022) at [01:22:16] to [01:23:50]. Available at: <https://www.youtube.com/watch?v=mwEgmJ9f6Y0>.

⁵ CFJ (Substantive) Written Submissions on General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill [B18-2022] (25 October 2022). Available at: https://causeforjustice.org/wp-content/uploads/2022/11/CFJ-Submissions_GL-Anti-Money-Laundering-and-CTF-AB.pdf.

STRUCTURE OF SUBMISSIONS

7.	Our submissions are structured under the following headings:	page no
	A. Caution against premature publication of Bill	4
	B. Need for (and justification of) legislative intervention	4
	C. General comments on problematic proposals	11
	D. Table of comments on specific amendment proposals	13
	Clause 1 <i>in re</i> amendment of section 1	13
	Clause 2 <i>in re</i> amendment of section 2	13
	Clause 3 <i>in re</i> amendment of section 11	14
	Clause 4 <i>in re</i> amendment of section 12	14
	Clause 5 <i>in re</i> amendment of section 13	14
	Clause 6 <i>in re</i> amendment of section 17	15
	Clause 7 <i>in re</i> amendment of section 18	15
	Clause 8 <i>in re</i> amendment of section 23	15
	Clause 9 <i>in re</i> amendment of section 24	15
	Clause 10 <i>in re</i> amendment of section 25	15
	Clause 11 <i>in re</i> amendment of section 29	16
	Clause 12 <i>in re</i> amendment of section 31	16
	Clause 13 <i>in re</i> substitution of section 33	16
	Clause 14 <i>in re</i> amendment of section 34	16
	Clause 15 <i>in re</i> substitution of certain words and expressions	16
	Clause 16 <i>in re</i> short title	16
	E. Summary and conclusion	17

A. CAUTION AGAINST PREMATURE PUBLICATION OF BILL

8. The Anti-Money Laundering Bill is currently being considered by Parliament, and has generated intensive engagement since October 2022.⁶ The NPO Bill and the Anti-Money Laundering Bill propose amendments to some of the exact same sections of the NPO Act – most notable section 2 ‘Object of Act’ and section 12 ‘Requirements for registration’.
9. Given the ongoing and (as yet) unfinalised Anti-Money Laundering Bill legislative process, CFJ humbly submits that the publication of the NPO Bill is premature. Proceeding with the NPO Bill at this time, not only risks creating counter-productive duplication and legislative contradictions, but also undermining (or even undoing) of any progress being made through the Anti-Money Laundering Bill. To ensure statutory congruence, it would be prudent for the Department to publish (an updated version of) the NPO Bill only after having had an opportunity to consider the final version of the Anti-Money Laundering Bill properly.
10. ***REQUEST: CFJ humbly request the Department to withdraw the NPO Bill until such time that the Anti-Money Laundering Bill process has been finalised and the Department has had the opportunity to consider its contents.***

B. NEED FOR (AND JUSTIFICATION OF) LEGISLATIVE INTERVENTION

11. The amendments proposed in the Bill will only be necessary if:
- 11.1. Actual and sufficiently important problems and/or legislative gaps exist that are not adequately addressed by existing legislation; and
- 11.2. The proposals contained in the Bill are able to successfully address these problems and gaps, without enabling unjustifiable violations of fundamental rights.
12. CFJ acknowledges and agrees that preventing money laundering and combating terrorism financing is a necessary and legitimate government purpose, which simultaneously serves the public interest. CFJ further acknowledges and agrees that it is vitally important to the socio-economic well-being of South Africa and its people, to guard against the Republic being grey-listed by the Financial Action Task Force (“FATF”).
13. We commend and support constructive efforts to address serious social ills and criminal activities proactively and effectively. However, we also recognise and emphasise the equal importance of avoiding unforeseen and unintended detrimental consequences, especially those that would threaten the well-being of the Republic and its people.
14. The nonprofit sector serves millions of South Africans through doing good public benefit work. The Explanatory Memorandum on the NPO Amendment Bill, 2018 (“the Explanatory Memorandum”)

⁶ See footnote 1.

recognises that NPOs “provide services to the most vulnerable in society and... advocate and [are] a voice to the voiceless”.⁷

15. The purpose of the NPO Act is to “create an enabling environment in which NPOs can flourish, and allow for voluntary registration with minimal regulatory powers conferred on the NPO Directorate”.⁸ One of the objectives of the Bill is to “reduce the cost of compliance as [NPOs] provide services”.⁹
16. Legislative amendments that will put additional pressure on the already over-extended and under-resourced NPO sector, for example by taking up scarce and valuable capacity and resources, must be avoided.¹⁰

Critical preliminary questions

17. The Bill seeks to amend certain sections of the NPO Act, including making registration mandatory for foreign NPOs. This necessarily means all foreign NPOs will be required to comply with the existing provisions of the Act as well as the proposed new provisions in the Bill. This is a drastic change from the status quo: from encouraging voluntary registration and compliance to compelling it.
18. The Bill further ostensibly retains voluntary registration for local (South African/non-foreign) NPOs,¹¹ yet practically prohibits any (i.e. all) NPOs from operating in the Republic without being registered.¹² This means that registration under – and compliance with – the NPO Act will be *de facto* compulsory for all NPOs. This is likewise drastic change from the status quo: from encouraging voluntary registration and compliance to compelling it.
19. The proposed amendments will impose legal obligations and limit the constitutional rights of all NPOs (both foreign and local), their governors and office-bearers, the majority of whom are unlikely to ever be involved in money laundering or the financing of terrorism.
20. To ensure the proposed amendments are necessary and constitutionally justified, we need to two critical preliminary questions concerning the:
 - 20.1. Likelihood of the legislative amendments achieving their purpose (Question 1); and
 - 20.2. Existence of less restrictive means to achieve the legislative purpose (Question 2).

⁷ The Explanatory Memorandum on the NPO Amendment Bill, 2018 at [1.2]. Available at: https://www.gov.za/sites/default/files/gcis_document/202210/47336gon2656.pdf.

⁸ Explanatory Memorandum at [1.1].

⁹ Explanatory Memorandum at [1.4.2].

¹⁰ CFJ *Initial Submissions* at [28] to [34].

¹¹ See clause 2 *in re* the amendment of section 2.

¹² See clause 4(d) *in re* the insertion of new section 12(2)(5).

Question 1: Likelihood of the legislative amendments achieving their purpose

What is the level of assurance that making registration under the NPO Act compulsory for NPOs, will in fact translate to preventing money laundering enterprises in the NPO sector?

21. It is necessary to ensure that the proposed amendments will in fact be effective at addressing money laundering and terrorism financing in practice. Otherwise, the amendments will serve no legitimate purpose and place an unconstitutional burden on NPOs (and their governors and office-bearers).¹³
22. Specifically and most importantly – as one of the motivations behind the Bill is to “[m]itigate the risk of money laundering and the financing of terrorist activities through NPOs” (and by implication, meet the standards and recommendations set by the FATF in order to avoid grey-listing)^{14 15} – the proposed amendments (measures/solutions) must, if anything, actually achieve this objective. The legislation must be effective in combating money laundering and terrorism financing (the identified public ills). The crux of the matter is: if the legislative intervention does not achieve this objective and therefore does not prevent grey-listing (by satisfying the FATF), the whole exercise (and concomitant allocation of capacity and resources) will be in vain/a waste.
23. **REQUEST: We humbly request the Department to provide us with evidence – and explain why the provided evidence forms a rational basis – for how the specific proposed amendments in the Bill will in fact translate into effectively addressing the identified public ills.**
24. An important and central aspect of a successful NPO registration and regulation system, is the support and oversight provided by the NPO Directorate (“the Directorate”). We are gravely concerned by the FATF’s contention that “South Africa also has no capacity to monitor or investigate NPOs identified to be at risk of [terrorism financing] abuse”.¹⁶
25. Even if the proposed amendments are able to address and resolve the identified social ills, but are not proactively and effectively implemented, the FATF requirements will (still) not be complied with – and grey-listing will not be avoided.
26. **REQUEST: We humbly request the Department to provide us with an explanation of how it will be able to effectively implement and manage the additional responsibilities (and increased workload)**

¹³ I.e. unreasonably and unjustifiably limit their rights.

¹⁴ Explanatory Memorandum at [2.3.2].

¹⁵ See *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations* (March 2022). Available at: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

¹⁶ FATF *Anti-Money Laundering and Counter-Terrorist Financing Measures South Africa: Mutual Evaluation Report* (October 2021) on p 176. Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-South-Africa.pdf>.

that will necessarily follow the implementation of the proposed amendments, including effectively identifying and addressing money laundering and terrorism financing in and via the NPO sector.

27. As mentioned at above, proposed legislation limiting constitutional rights will be unconstitutional if it does not achieve the purpose for which it is made. The reason for this is found in the limitations clause in section 36(1) of the Constitution, which provides as follows:

The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:

- (a) the nature of the right;*
- (b) the importance of the purpose of the limitation;*
- (c) the nature and extent of the limitation;*
- (d) the relation between the limitation and its purpose; and*
- (e) less restrictive means to achieve the purpose.*

28. A limitation on constitutional rights, which the proposed legislation implies, must in other words be reasonable and justifiable, and in order to determine that, factors (a) to (e) must be considered. This necessitates a delicate balancing exercise – popularly called the ‘proportionality test’ – requiring all five factors to be read together.
29. In short, the question is: is there a rational relationship between the limitation on the rights and the purpose of the limitation, taking into account all five factors.

Factor (a)

30. Many religious organisations – of which many are voluntary associations not registered under the NPO Act or foreign organisations – routinely, as part and parcel of practicing the doctrines and tenets of their faith/fulfilling their religious ‘mandate’:

- 30.1. Make donations to individuals or organisations domiciled in South Africa (and/or abroad); and
- 30.2. Provides services (including of a humanitarian, charitable, religious, educational or cultural nature) within the borders of South Africa (and/or abroad).

31. The rights in question – being the right to freedom of association (section 18) and the right to freedom of conscience, religion, thought, belief and opinion (section 15) – are important freedom rights under the South African Constitution. Any limitation on these rights must be considered carefully.

Factor (b)

32. It is clear that the limitation serves an important purpose: to combat certain (criminal and detrimental) conduct and actions.

33. For the purposes of properly considering the Bill, factors (c) to (e) are critically important.

Factor (c)

34. Factor (c) requires an examination into the severity of the limitation in limiting the rights in question. Answering this question assists in determining the relationship between the limitation and its purpose. It has been established by our courts that the more substantial the inroad into fundamental rights, the more persuasive the grounds of justification must be.¹⁷ If we consider the possible detrimental effect of compulsory registration on many completely innocent NPOs,¹⁸ this factor already raises serious doubt as to whether the proposed legislation can even pass this test.

Factor (d)

35. Factor (d) actually establishes the principle of proportionality – i.e. whether a rational relationship exists between the limitation and its purpose.

36. The principle of proportionality was first established (under the interim Constitution) in the landmark Constitutional Court judgment of *S v Makwanyane*,^{19 20} and has since been applied in countless other cases. This constitutional principle is so important, that it found its way into the final (1996) Constitution, in the form of the limitations clause (section 36).²¹

37. The proportionality test consists of two elements:

37.1. First, it must be determined whether the limitation will achieve its purpose; and

37.2. Second, whether there is a rational relationship between the limitation and its purpose.

In respect of the first element:

38. If there is no convincing indication that the proposed legislation will in fact achieve its purpose (i.e. combat money laundering and terrorism financing) effectively, the Bill cannot meet the first element of factor (d)

¹⁷ *S v Bhulwana; S v Gwandiso* [1995] ZACC 11; 1996 (1) SA 388 (CC); 1995 12 BCLR 1579 (CC) (29 November 1995) at [18]. Available at: <https://collections.concourt.org.za/handle/20.500.12144/2009>.

¹⁸ The human resources and financial cost of meeting additional compliance burdens, against the threat of criminal sanctions.

¹⁹ *S v Makwanyane and Another* 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (6 June 1995) at [109]. Available at: <http://www.saflii.org/za/cases/ZACC/1995/3.html>.

²⁰ N Petersen *Proportionality and the Incommensurability Challenge: Some Lessons from the South African Constitutional Court* in 'Public Law & Legal Theory Research Paper Series Working Paper No 13-07' (New York University School of Law) (March 2013) on p 1. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2230454.

²¹ *Ibid.*

and it would mean that there can never be a rational relation between the limitation and its purpose.²² This is a basic test for every piece of legislation that limits constitutional rights.²³

In respect of the second element:

39. Even if it can be argued that Bill does in fact achieve its purpose, factor (d) requires further that it must also be determined to what extent the limitation imposed by the legislation indeed promotes the purpose of the legislation. If the limitation promotes the purpose, but in the process affects persons, organisations, conduct or interests that have nothing or very little to do with the matter, the limitation is over-broad or over-inclusive – meaning, it covers more than what is necessary to be effective.²⁴ An over-broad or over-inclusive limitation does not comply with the second element required by factor (d), meaning the limitation would still be unconstitutional (despite achieving its purpose).
40. For the reasons advanced above, we submit with respect that the proposed legislation does not meet these basic requirements of section 36 and that the Bill will be unconstitutional (if adopted without amendment).
41. Please note that factor (e) of section 36(1) is discussed under ‘Question 2’.

Question 2: Existence of less restrictive means to achieve the legislative purpose

Are the measures in the NPO Act, which will now become compulsory for NPOs, the least restrictive means to achieve the purpose of preventing money laundering and combatting terrorism financing in and via the NPO sector?

42. Even if the proposed amendments are good measures/solutions, in order to be constitutionally defensible, they must also comply with factor (e) of section 36(1), and must infringe the existing rights and freedoms of NPOs (and their governors and office-bearers) as little as is practically possible.

Factor (e)

43. Factor (e) requires that where less restrictive (and lawful) means are available to achieve the purpose of the limitation, only such less restrictive means will pass constitutional muster. This is because, as explained above, all five factors in section 36(1) must be read together. This means that factor (e) also

²² See *First National Bank of SA Limited t/a Wesbank v Commissioner for the South African Revenue Services and Another; First National Bank of SA Limited t/a Wesbank v Minister of Finance* (CCT19/01) [2002] ZACC 5; 2002 (4) SA 768; 2002 (7) BCLR 702 (16 May 2002) at [108] to [109]. Available at: <http://www.saflii.org/za/cases/ZACC/2002/5.html>.

²³ See *Savoi and Others v National Director of Public Prosecutions and Another* (CCT 71/13) [2014] ZACC 5; 2014 (5) BCLR 606 (CC); 2014 (1) SACR 545 (CC); 2014 (5) SA 317 (CC) (20 March 2014). Available at: <http://www.saflii.org/za/cases/ZACC/2014/5.html>.

²⁴ *Savoi* at [31]. See also *Case and Another v Minister of Safety and Security and Others, Curtis v Minister of Safety and Security and Others* (CCT20/95, CCT21/95) [1996] ZACC 7; 1996 (3) SA 617; 1996 (5) BCLR 608 (9 May 1996). Available at: <http://www.saflii.org/za/cases/ZACC/1996/7.html>.

These cases follow on the *S v Williams and Others* (CCT20/94) [1995] ZACC 6; 1995 (3) SA 632 ; 1995 (7) BCLR 861 (CC) (9 June 1995) at [80] to [86], in which this principle was established. Available at: <http://www.saflii.org/za/cases/ZACC/1995/6.html>.

contributes to answering the question of whether there is a rational relationship between the purpose of the limitation and the severity of the limitation.²⁵

44. The NPO Act is a law of general application. The right of NPOs (and their governors and office-bearers) to choose whether to register,²⁶ may be restricted – by making registration compulsory – if the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom (as provided by section 36 – the limitations clause).
45. FATF Recommendation 8 does not require blanket compulsory registration of all NPOs (whether local or foreign, “*since not all NPOs are inherently high risk (and some may represent little or no risk at all)*”). For this reason it is important to identify the subset of organisations that fall within the FATF definition of NPO and that are likely to be at risk of being abused for money laundering and terrorism financing (i.e. ‘at-risk’ NPOs). In order to properly identify ‘at-risk’ NPOs, it will be necessary to investigate and understand the risk of terrorism financing (and money laundering) in and via the South African NPO sector.
46. In order to pass constitutional muster, the measures that will become compulsory for any limited subset of ‘at-risk’ NPOs, must still be the least restrictive means to achieve the purpose of preventing money laundering and combatting terrorism financing in the NPO sector. According to (law) Professor Niels Petersen, “[i]n a significant portion of cases, the constitutional incompatibility of a statute is based on the argument that a less restrictive means would have achieved the same purpose”.²⁷
47. We are immediately concerned by the fact that many religious organisations routinely, do good public benefit work in the Republic by *inter alia* making donations to individuals or organisations, and providing services (of a humanitarian, charitable, religious, educational and/or cultural nature).
48. Compulsory registration for all NPOs will place an immense administrative and financial burden on these organisations. The additional registration and compliance burden may cause many organisations to cease operations in South Africa, which will necessarily mean the loss of good and essential public benefit work being done within our borders. Ultimately, the people of South Africa – especially the socio-economically vulnerable – will suffer most.
49. Professor Peterson notes the importance of the “*less restrictive means argument*” in the seminal Constitutional Court judgment of *S v Manamela*,^{28 29} where the court noted the importance of:

²⁵ See *S v Williams* at [67]. See also *MEC for Education: Kwazulu-Natal and Others v Pillay* (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007). Available at: <https://www.saflii.org/za/cases/ZACC/2007/21.html>.

²⁶ Including being subjected to the concomitant compliance burdens and/or criminal sanctions for non-compliance.

²⁷ Peterson *Proportionality and the Incommensurability Challenge* on p 6.

²⁸ *S v Manamela and Another* (Director-General of Justice Intervening) (CCT25/99) [2000] ZACC 5; 2000 (3) SA 1; 2000 (5) BCLR 491 (14 April 2000) at [45] and [49]. Available at: <http://www.saflii.org/za/cases/ZACC/2000/5.html>.

²⁹ Peterson *Proportionality and the Incommensurability Challenge* on p 7.

- 49.1. Appreciating South Africa's social reality;³⁰
- 49.2. Considering the impact of the legislation (the width of its application and the socio-economic status of those likely to be affected);³¹ and
- 49.3. Determining whether "*there is a less invasive means of achieving the legislative purpose which serves to a significant degree to reconcile the conflicting interests... and which does not raise concerns relating to additional cost, the prioritisation of social demands and practical implementation*".³²
50. We reiterate that religious organisations do tremendous good public benefit work, impacting millions and often for the benefit of society's socio-economically vulnerable and marginalised. In this way, these organisations take a lot of pressure off the state (and particularly the DSD) by providing welfare/quasi-welfare services. If the proposed amendments will force these organisations to cease operations, much harm will be suffered by South African society.

In summary and conclusion

51. These questions are complex, requiring proper consideration of the constitutionality of intended implications and unintended consequences, and of the constitutional rights and interests at play.
52. It is our firm conclusion that the legislation as it stands does not pass the requirements of factor (e) of section 36(1) in that it does not employ the least restrictive means to achieve its purpose. We are also convinced that if the legislation is not amended, it will not establish a rational relationship between the limitations imposed by it and the purpose for which it is proposed. It will not comply with the requirements of section 36(1) and will be unconstitutional.

C. GENERAL COMMENTS ON PROBLEMATIC PROPOSALS

53. CFJ is foremostly concerned by the potentially far-reaching detrimental impact of the proposed additional compliance burden – i.e. the compulsory registration (and/or compulsory compliance requirements, irrespective of registration status) – on NPOs (and by extension, South African society).
54. For this reason, **CFJ prefers and supports registration remaining completely voluntary for all (both foreign and local) NPOs.**
55. We are also concerned:
- 55.1. By other potential unintended detrimental consequences, such the additional (and potentially unmanageable) regulatory burden on DSD and/or the Directorate; and

³⁰ *Manamela* at [45].

³¹ *Ibid* at [44].

³² *Ibid* at [49].

- 55.2. Whether the proposed amendments will in fact translate into the proactive and effective identifying, preventing and addressing of money laundering and terrorism financing in and via the NPO sector.
56. **Alternatively**,³³ CFJ would support registration being made compulsory for a limited subset of 'at-risk' NPOs, subject to the limitation of rights and freedoms of the limited subset of organisations being constitutionally defensible.
57. To this end, CFJ would
- 57.1. Support the insertion of a (new) definition for 'at-risk NPO' into section 1 of the NPO Act.
- 57.2. Appreciate an adequate opportunity to evaluate the appropriateness of any identified limited subset of NPOs and the criteria for determining which organisations are 'at-risk', and specifically emphasise the importance of ensuring that any amendments do not exceed the requirements set by the FATF's Recommendation 8.³⁴

³³ In the event that the Department decides against keeping registration completely voluntary for all NPOs (both foreign and local).

³⁴ FATF *Mutual Evaluation Report* on p 173.

D. TABLE OF COMMENTS ON SPECIFIC AMENDMENT PROPOSALS

CLAUSE	PROPOSAL	MOTIVATION
Clause 1 <i>in re</i> amendment of section 1 'Definitions'	<ul style="list-style-type: none"> • CFJ is not opposed to the proposed amendments in clause 1. 	<ul style="list-style-type: none"> • N/a.
Clause 2 <i>in re</i> amendment of section 2 'Objects of Act'	<ul style="list-style-type: none"> • CFJ does not support the amendment proposed in clause 2. • CFJ proposes retaining voluntary registration for all nonprofit organisations (both foreign and local). • Alternatively, CFJ would support registration being made compulsory for a limited subset of 'at-risk' NPOs, subject to the limitation of rights and freedoms of the subset of NPOs being constitutionally defensible. <ul style="list-style-type: none"> ○ Insert a (new) definition for 'at-risk NPO' into section 1 of the NPO Act. 	<ul style="list-style-type: none"> • Many NPOs choose not to register for various legitimate reasons. Compulsory registration for all NPOs will automatically impose additional compliance burdens that will necessarily divert valuable and scare human and financial resources away from performing good public benefit work to meeting administrative functions and obligations. • We are concerned that the NPO Act does not provide the necessary parameters for registration of NPOs (and the systems and processes to cope with registrations). • We are concerned about the impact of the additional work burden on the Department and/or Directorate (especially its oversight capacity).

CLAUSE	PROPOSAL	MOTIVATION
Clause 3 <i>in re</i> amendment of section 11 'Benefits of registration'	<ul style="list-style-type: none"> • CFJ is not opposed to the proposed amendments in clause 3. 	<ul style="list-style-type: none"> • N/a.
Clause 4 <i>in re</i> amendment of section 12 'Requirements for registration'	<ul style="list-style-type: none"> • CFJ does not support the amendments proposed in subclause 4(d) <i>in re</i> new section 12(5). • CFJ supports keeping registration completely voluntary for all nonprofit organisations (both local and foreign). • CFJ is not opposed to the remaining proposed amendments in clause 4. • In addition, CFJ points out the: <ul style="list-style-type: none"> ○ Textual error in subclause 4(d) <i>in re</i> new subsection 12(5): <i>"Any nonprofit organisation, including foreign nonprofit organisations that intend to operate business within the Republic must be registered in terms of this Act <u>before operate</u> and shall be subjected to the provisions of this Act and any other laws"</i>. ○ Apparently missing wording at the end of new subsection 12(5) after "... any other laws". 	<ul style="list-style-type: none"> • <i>In re</i> registration of NPOs: see comments at clause 2 above. • <i>In re</i> typographical errors: It is prudent and necessary to ensure legislation does not contain any textual errors or missing wording.
Clause 5 <i>in re</i> amendment of section 13 'Application for registration'	<ul style="list-style-type: none"> • CFJ is not opposed to the proposed amendments in clause 5. 	<ul style="list-style-type: none"> • N/a.

CLAUSE	PROPOSAL	MOTIVATION
Clause 6 <i>in re</i> amendment of section 17 'Accounting records and report'	<ul style="list-style-type: none"> CFJ is not opposed to the proposed amendments in clause 6. 	<ul style="list-style-type: none"> N/a.
Clause 7 <i>in re</i> amendment of section 18 'Duty to provide reports and information'	<ul style="list-style-type: none"> CFJ is not opposed to the proposed amendments in clause 7. 	<ul style="list-style-type: none"> N/a.
Clause 8 <i>in re</i> amendment of section 23 'Voluntary deregistration and winding up or dissolution'	<ul style="list-style-type: none"> CFJ is not opposed to the proposed amendments in clause 8. 	<ul style="list-style-type: none"> N/a.
Clause 9 <i>in re</i> amendment of section 24 'Register of nonprofit organisations'	<ul style="list-style-type: none"> CFJ is not opposed to the proposed amendments in clause 9. 	<ul style="list-style-type: none"> N/a.
Clause 10 <i>in re</i> amendment of section 25 'Access by public to documents submitted to director'	<ul style="list-style-type: none"> CFJ is not opposed to the proposed amendments in clause 10. 	<ul style="list-style-type: none"> N/a.

CLAUSE	PROPOSAL	MOTIVATION
Clause 11 <i>in re</i> amendment of section 29 'Offences'	<ul style="list-style-type: none"> CFJ supports the proposed amendments in clause 11. 	<ul style="list-style-type: none"> It is prudent and necessary to ensure legislation does not contain any textual errors.
Clause 12 <i>in re</i> amendment of section 31 'Delegation of functions'	<ul style="list-style-type: none"> CFJ supports the proposed amendments in clause 12, as far as these relate to correcting certain textual errors aligning the NPO Act with cross-referenced legislation. CFJ is not opposed to the remaining amendments proposed in clause 12. 	<ul style="list-style-type: none"> It is prudent and necessary to ensure legislation does not contain any textual errors and that cross-references to other legislation are correct.
Clause 13 <i>in re</i> substitution of section 33 'Repeal of laws'	<ul style="list-style-type: none"> CFJ supports the proposed amendments in clause 13. 	<ul style="list-style-type: none"> It is prudent and necessary to ensure legislation does not contain any textual errors and that cross-references to other legislation are correct.
Clause 14 <i>in re</i> amendment of section 34 'Transitional arrangements'	<ul style="list-style-type: none"> CFJ supports the proposed amendments in clause 14. 	<ul style="list-style-type: none"> It is prudent and necessary to ensure legislation does not contain any textual errors.
Clause 15 <i>in re</i> substitution of certain words and expressions	<ul style="list-style-type: none"> CFJ is not opposed to the amendments proposed in clause 15. 	<ul style="list-style-type: none"> N/a.
Clause 16 <i>in re</i> short title	<ul style="list-style-type: none"> CFJ does <u>not</u> support the proposed amendment 	<ul style="list-style-type: none"> The proposed short title should be updated to include reference to the year in which the Bill will be introduced in Parliament.

E. SUMMARY AND CONCLUSION

58. In summary:

Preferred option – keep registration completely voluntary for all NPOs

58.1. CFJ supports and recommends that registration of all NPOs (both foreign and local) remain completely voluntary.

Registration: Alternative option – compulsory registration for an appropriate limited subset of ‘at-risk’ NPOs only

58.2. Should the Department decide against keeping registration completely voluntary for all NPOs (our primary/preferred option), CFJ recommends (in the alternative), that registration be made compulsory only for a properly identified and appropriate limited subset of ‘at-risk’ NPOs.

59. We reiterate our **specific requests** to the Department, to:

59.1. Withdraw the NPO Bill until such time that the Anti-Money Laundering Bill process has been finalised and the Department has had the opportunity to consider its contents;

59.2. Provide us with evidence – and explain why the provided evidence forms a rational basis – for how the specific proposed amendments in the Bill will in fact translate into effectively addressing the identified public ills; and

59.3. Provide us with an explanation of how it will be able to effectively implement and manage the additional responsibilities (and increased workload) that will necessarily follow the implementation of the proposed amendments, including effectively identifying and addressing money laundering and terrorism financing in and via the NPO sector.

60. We trust that these written submissions will be of assistance to the Department and look forward to the Department’s response thereto (if any) in due course.

61. CFJ remains at the Department’s disposal to assist in the further development and/or amendment of the draft Bill to effectively achieve constitutionally compliant purposes and prevent any unforeseen detrimental consequences flowing from its enactment.

Yours faithfully,

Liesl Pretorius

Legal Advisor and Parliamentary Liaison