

South African Institute of Race Relations NPC (IRR)
Supplementary Submission
to the
Department of Social Development
regarding the
Draft Non-Profit Organisations Amendment Bill of 2021
Johannesburg, 9th June 2022

Introduction

The Department of Social Development (the Department) has invited interested people and stakeholders to submit written comments on the Draft Non-Profit Organisations Amendment Bill of 2021 (the Bill) by an amended deadline of 10th June 2022.

This supplementary submission on the Bill is made by the South African Institute of Race Relations NPC (IRR), a non-profit organisation formed in 1929 to oppose racial discrimination and promote racial goodwill. Its current objects are to promote democracy, human rights, development, and reconciliation between the peoples of South Africa.

The need for a supplementary submission

The IRR met the initial deadline for comment on the Bill, which was 31st October 2021. However, it has since come to the IRR's attention that the Department plans a two-stage process of amending the Non-Profit Organisations Act of 1997 (the NPO Act)– and that a number of concerned non-profit organisations (NPOs) have petitioned the Department to withdraw the current Bill and implement a one-stage amendment process instead.

The IRR endorses this concern. In this supplementary submission, it thus urges the Department to introduce all its proposed amendments to the NPO Act by means of a one-stage process. In this way, all the changes that are envisaged can be put forward at the same time, read as a whole, and properly assessed. The IRR thus also urges that the current Bill – which is often so poorly drafted as to be void for vagueness – should be withdrawn and replaced by a single composite measure in due course.

In addition, many NPOs have expressed a fear that the Bill could allow them to be deregistered on uncertain and potentially arbitrary grounds. This concern should also be addressed. This can be done by ensuring that no changes are made to the NPO Act's clear and objective criteria for the registration of non-profit organisations (under Sections 12 to 14 of the NPO Act), or to the limited circumstances in which their registrations may be cancelled (under Sections 20 to 22 of the NPO Act).

Reiterating the points made in its initial submission

In its initial submission of 29th October 2021, the IRR set out the key changes needing to be made to the Bill, along with its motivation for these amendments. In this supplementary

submission, the IRR reiterates the importance of these proposed changes and urges that the necessary amendments be included in any future version of the Bill.

As part of its initial submission, the IRR urged that provisions requiring the compulsory registration of ‘foreign organisations’ should be deleted. In this supplementary submission, it further emphasises the need for this change.

A compulsory registration requirement for ‘foreign organisations’ has the potential to undermine the right to freedom of association in Section 18 of the Constitution. It is also at odds with international human rights law, which (in the words of William Bird, director of Media Monitoring Africa) ‘favours a notification procedure over a prior authorisation procedure’. In addition, the Bill does not define ‘foreign organisations’, which undermines the certainty required by the rule of law and creates a potential for abuse.

The way forward

Most of the proposed changes to the Bill are technical amendments. Several are necessary to correct typographical errors inadvertently included in the NPO Act. However, the clauses identified in the IRR’s initial submission need to be amended or removed, for the reasons earlier outlined.

A one-stage amendment process should also be used, in which all proposed changes are set out in clear and unambiguous terms, existing objective criteria for the registration (or de-registration) of NPOs are retained, and any clauses requiring registration for ‘foreign organisations’ are removed.

The new composite Bill should also be accompanied by a final socio-economic impact assessment report, which clearly identifies and analyses the ramifications of the proposed provisions. This report will help all South Africans to ‘know about’ the issues raised by the new bill, so that they can comment, from a position of well-informed understanding, on the terms of this proposed statute.

The IRR appreciates the further opportunity the Department has provided to comment on the Bill. It would be glad to make oral presentations to the Department as well, in support of the points it has made.

South African Institute of Race Relations NPC

9th June 2022