



RIGHT2KNOW

WESTERN CAPE

GAUTENG

KWAZULU-NATAL

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06 October 2022

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Honourable Minister Lindiwe Zulu,

COMMENT: Nonprofit Organisation Amendment Bill 2021

Introduction

The Right2Know Campaign launched in August 2010 and has grown into a movement centred on freedom of expression and access to information. We are a democratic, activist-driven campaign that strengthens and unites citizens to raise public awareness, mobilise communities and undertake research and targeted advocacy that aims to ensure the free flow of information necessary to meet people's social, economic, political and ecological needs and live free from want, in equality and in dignity (read our Vision, Mission and founding Principles).

Clause commented on	Proposal	Motivation
Preamble: NPO Governance	Minimum requirements	Welcomed with enquiry regarding capacitation and the role of government
Amendment of section 2 of Act 71 of 1997 2. Section 2 of the principal Act is hereby amended by the insertion of the word "and" at the end of paragraph (e), and the addition of the following paragraph: " <u>(f) facilitating voluntary registration of nonprofit organisations</u> "	This should be withdrawn	This is inconsistent with the international Bill of Human Rights: Article 7 All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and

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<p><u>and compulsory registration for foreign organisations operating within the borders of the Republic of South Africa."</u></p>		<p>against any incitement to such discrimination.</p>
<p>Amendment of section 11 of Act 71 of 1997 3. Section 11 of the principal Act is hereby amended by the substitution for section 11 of the following section: "The Minister may prescribe benefits or allowances applicable to registered Nonprofit organisations, after consultation with [the committees of the two Houses of] Parliament [responsible for welfare] and with the concurrence of every Minister whose department is affected by a particular benefit or allowance."</p>		<p>is unnecessarily broad and gives the Minister too much discretionary power given that 'consultation' is not defined fully</p>
<p>Amendment of section 12 of Act 71 of 1997</p> <p>4. Section 12 of the principal Act is hereby amended— (a) by the substitution in subsection (1) of the following subsection: "(1) Any nonprofit organisation that is not an organ of state may apply to the [director] Office of the Registrar for registration."5. (b) by the substitution in subsection (2) for paragraph (h) of the following paragraph: "(h) specify the organisational structures and</p>	<p>Appears to be inconsistent with International Human Rights Law raising the question as to compliance with the constitutional</p> <p>Propose a well-structured and fully inclusive process be put into place to consult and agree on proposed changes.</p>	<p>The NPO sector has proved valuable and effective in reaching communities. The sector must be regulated but now it seems that this bill seeks to control the NPO sector to an extent of operations. Operations and administration are two completely different factors.</p> <p>are unnecessary, as they are already catered for in other legislation; are vague and will create confusion;</p>





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mechanisms for its governance, which shall at a minimum include the office of or designation of the chairperson, secretary and treasurer with their deputies;"

(c) by the deletion in subsection (2) of the word "and" at the end of paragraph (n) and insertion of the word "and" at the end of paragraph (o) and the addition of the following paragraph: "(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."; and (d) by the addition of the following subsections: "

(4) No nonprofit organisation that has a similar or identical name to an existing nonprofit organisation or any other organisation and such name is likely to cause confusion with any other organisation or individual person shall be permitted to register, unless there is sufficient proof that the applicant has a legal right to that name or has consent to use that name.

(5) Any nonprofit organisation, including foreign nonprofit

are unnecessarily broad in relation to the risks which it seeks to counter; and will restrict freedoms and increase administrative burdens, with little or none of the intended impact.





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<p><u>organisations 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."</u></p>		
<p>Amendment of section 17 of Act 71 of 1997 6. Section 17 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: " Every registered nonprofit organisation must, [to the standards of generally accepted accounting practice] in the prescribed manner—".</p>	<p>these proposed amendments must be communicated to every NPO directly post withdrawal to form reasonable and acceptable amendments.</p>	<p>The NPO sector consists of many NPOs. At this stage less than 5% who were consulted regarding this bill were aware of it.</p>
<p>Amendment of section 18 of Act 71 of 1997</p> <p>7. Section 18 of the principal Act is hereby amended—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: "(1) Every registered nonprofit organisation must, in writing, <u>in a prescribed</u></p>	<p>Propose that these proposed amendments be communicated to every NPO directly post withdrawal to form reasonable and acceptable amendments.</p>	<p>Without proper communication of these requirements, most NPOs will be in danger of being deregistered simply due to the fact that they are not aware of what is required and might not have the capacity to fulfil all the requirements are vague and will create confusion; are unnecessarily broad in relation to the risks which it seeks to counter; and</p>





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<p><u>manner</u>, provide the director with—"; and (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph: "(a) a narrative report of its activities [in the prescribed manner] together with its financial statements and the accounting officer's report as contemplated in section 17 (1) and (2) [,within nine months after the end of its financial year];".</p>		<p>will increase administrative burdens, with little or none of the intended impact.</p>
<p>Amendment of section 18 of Act 71 of 1997</p> <p>7. Section 18 of the principal Act is hereby amended— (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: "(1) Every registered nonprofit organisation must, in writing, <u>in a prescribed manner</u>, provide the director with—"; and (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph: "(a) a narrative report of its activities [in the prescribed manner] together with its financial statements and the accounting officer's report as contemplated in section 17 (1) and (2) [,within nine months after the end of its financial year];".</p>	<p>Propose that the bill be temporarily withdrawn for widespread and better consultation and inclusivity of all NPOs - especially those that operate at the level of grassroots communities.</p>	<p>The Prescribed manner has not been canvassed to the extent that all (including small community NPO/groups) it is conclusive that the prescribed manner is possible, realistic and achievable.</p>





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<p>Amendment of section 23 of Act 71 of 1997</p> <p>8. Section 23 of the principal Act is hereby amended— (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: “(1) A registered nonprofit organisation may [reregister] <u>deregister</u> voluntarily by sending the director—”; (b) by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph:8 “(i) stating its intention to [reregister] <u>deregister</u> voluntarily and the reasons therefor;” and (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph: “(a) cancel the organisation’s certificate of registration, and [reregister] <u>deregister</u> it by amending the register; and”.</p>	<p>Propose that these proposed amendments be communicated to every NPO directly post withdrawal to form reasonable and acceptable amendments.</p>	
<p>10. Section 25 of the principal Act is hereby amended— (a) by the substitution for subsection (2) of the following subsection: “(2) [All members of the public have the right of access to and to inspect any document that the director is obliged to preserve] <u>Any person who wishes to access information in terms of subsection (1) must do so in terms of the</u></p>	<p>Withdraw the requirement to only use PAIA</p>	<p>PAIA has been abused such that the majority of requests never see the light of day. Simple access to information protocols with the necessary safeguards need to replace the use of PAIA</p> <p>The grounds for disqualification are unclear and hence leaves the bill inconclusive on this point.</p>





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<p>Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)."; and (b) by the deletion of subsection (3).</p>		<p>A disqualification register should be maintained and where will this be held?</p>
<p>Amendment of section 29 of Act 71 of 1997 11. Section 29 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: "(1) It is an offence to cause a nonprofit organisation, when it is being wound up or dissolved, to transfer its remaining assets otherwise than in the manner contemplated in section 12(2)[(0)](o)".</p>		<p>Main point to make for the remainder of the clauses is that there has been no proper process of participation/serious spaces for consultation - an absolutely necessary component of any piece of legislation that directly affects the rights of NPOs (where domestic or from other countries) and those who work for/oversee those NPOs. There are simply too much highly contestable provisions (some of which might be subject to legal challenge) - for this amendment bill to be pushed through in this short period</p>

We have been reliably informed that a Zoom-based public hearing process on 11 October - we take this opportunity to request to be invited to the hearing taking place. Invitations may be sent to nc@r2k.org.za . In the interest

Regards,

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