



Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE



1997 – 2022
25 Years of Advocacy in the Public Domain

Submission
to the
Standing Committee on Finance
on the
General Laws (Anti-Money Laundering
and Combating Terrorism Financing)
Amendment Bill
[B18 – 2022]

Introduction

1. The Parliamentary Liaison Office of the Southern African Catholic Bishops' Conference welcomes the opportunity to comment on the proposed legislation. We understand and appreciate the need to take seriously the warnings of the Financial Action Task-Force (FATF) concerning our country's ability to prevent terrorism financing. However, we do not believe that the answer to this problem lies in imposing onerous and intrusive conditions on the non-profit sector (which includes the wider faith sector).

Inadequate Consultation

2. The present Bill was released for comment on 27 September, with comments due by 10 October. Such a short period for public consultation is unacceptable, and makes a mockery of Parliament's obligations in terms of Section 59 of the Constitution (*"The National Assembly must ... facilitate public involvement in the legislative ... processes of the Assembly and its committees..."*).

The fact that the government is under pressure from FATF to avoid 'grey-listing' is not an excuse for this rushed process. Many smaller and under-resourced NPOs will have found it impossible to respond to this Bill in the short time provided, and their right to make comments will thus have been denied.

We therefore urge the Committee to extend the period for public comment for at least another month in order to give proper effect, and not just lip service, to the right of NPOs to be consulted on legislation that affects them, and which may even open their members to criminal sanction.

Specific Concerns

3. We do not intend to comment on the clauses of the Bill dealing with the Trust Property Control Act or the various financial sector statutes; we will comment only on the clauses relating to the **Nonprofit Organisations Act 51 of 1997**.

3.1. Compulsory Registration of NPOs

Clause 10 of the Bill proposes that registration of NPOs, which has up to now been voluntary, must become compulsory. This is justified, in the Bill's explanatory memorandum, with reference to Recommendation 8 and Immediate Outcome (IO) 10 of the FATF Mutual Evaluation Report on South Africa ('the Report'), dated October 2021.

It is far from clear, however, that either IO 10 or Recommendation 8 in any way require compulsory registration of NPOs. The thrust of both is instead that "South Africa has not yet done an assessment of their broader NPO sector to identify those organizations, based on their characteristics or activities, that put them at risk of TF [terrorism financing] abuse. South Africa also has no capacity to monitor or investigate NPOs identified to be at risk of TF abuse."¹

We submit that carrying out an assessment of NPOs based on their characteristics or activities, as the Report recommends, requires enhanced investigative and intelligence capacity, not merely the compulsory registration of NPOs. Indeed, it has not been demonstrated at all how compulsory registration will lead to the desired assessment of TF abuses.

Against this, compulsory registration threatens NPOs, especially small ones, with undue administrative burdens which many will be unable to meet. There are also obvious financial implications for NPOs that rely on voluntary staff and whose activities may be carried out with little or no financial underpinning.

Compulsory registration offends against the principle of freedom of association (Section 18 of the Constitution), and any limit on this right must be shown to be reasonable and justifiable. In the present context, this has not been shown. To quote the international law and governance expert, Dr Godfrey Musila, "Governments should uphold their international and

¹ FATF Report, p 176.

regional human rights commitments regarding freedoms of association, assembly, and expression. Mandatory registration procedures that are susceptible to abuse of discretion and that interfere in the normal operations of NGOs or their external sources of funding are not in keeping with these commitments.”²

3.2. Lack of State Capacity

It must also be noted that the common experience of NPOs that have voluntarily registered is that the NPO Directorate in the Dept Social Development is under-resourced and lacks the capacity to deal efficiently with voluntary registrations. There is thus every reason to assume that compulsory registration would simply amplify these problems, rather than lead to effective interventions against terrorism financing.

3.3. Prescribed Information

Clause 11 proposes that “prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations” must be provided to the NPO Directorate. This represents a considerable, and quite possibly unconstitutional, interference in the freedom of people to form NPOs and to conduct their activities. Even without knowing what information may ultimately be ‘prescribed’, it can easily be seen that such requirements will likely have a stifling effect on NPO work in general. Many people will see this as an invasion of their privacy, and will withdraw from NPO activities. For a sector that relies in large degree on voluntary members donating time and expertise, this could have a devastating impact.

This requirement will also, it hardly needs to be said, add considerably to the administrative and regulatory burdens faced by NPOs.

3.4. Disqualification of Office-Bearers

Clause 13 introduces a new Chapter into the Nonprofit Organisations Act dealing with the disqualification and removal of office-bearers. The first point to note is that there is no apparent link between these new requirements to be, or to continue as, an office-bearer in an

²https://freedomhouse.org/sites/default/files/2020-02/05132019_UPDATED_FINAL_Africa_Special_Brief_Freedoms_Under_Threat.pdf at page 21.

NPO, on the one hand, and the objective of combating terrorism financing on the other. For example, the fact that someone is, or becomes, insolvent, does not suggest an openness to terrorism financing. It must also be stressed that many NPOs, especially small ones that grow organically from within communities, do not handle large amounts of money. Therefore, the office-bearer criteria that apply to public companies or trusts, for example, do not necessarily apply to NPOs.

Secondly, the criteria for disqualification include being 'an unemancipated minor' or someone under a 'similar legal disability'. Quite a number of successful NPOs in our country have been started and run by minors. Many schools encourage the formation of charitable organisations among their pupils, for example. It is also conceivably the case that someone with a legal disability stemming from, for example, a mental condition, could be a perfectly capable office-bearer in an NPO. Both these categories of person will summarily be disqualified from holding office in an NPO if this clause is adopted – a conclusion that is clearly unfairly discriminatory and which can only serve to undermine the spirit of voluntary service and community involvement.

And, once again, there is no indication whatsoever of a link between the proposed limitation and the objective of combating terrorism financing.

4. Conclusion

Effective steps against money-laundering and terrorism financing do not require the kind of interference in the non-profit sector that this Bill proposes. The link between the envisaged steps and the prevention or elimination of terrorism financing is not apparent. On the other hand, it is quite clear that the many onerous administrative and legal requirements proposed by the Bill will make the work of NPOs far more difficult and financially burdensome than it needs to be.

The NPO sector makes a major contribution to the wellbeing and development of our country. In many instances, NPOs supply services and social goods that government has itself failed to provide for its people. We submit that Parliament should be looking for ways of strengthening and supporting the NPO sector, rather than entertaining measures that will merely burden it.

We wish the Committee well in its deliberations, and we are willing to make an oral submission if invited to do so.

For further information please contact:

Adv Mike Pothier

Programme Manager

Catholic Parliamentary Liaison Office

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