



**ILITHA LABANTU**  
PEOPLE WHO CARE ABOUT PEOPLE

**SUBMISSIONS BY ILITHA LABANTU:**

**GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING  
TERRORISM FINANCING) AMENDMENT BILL – AMENDMENTS TO  
THE  
NON-PROFIT ORGANISATIONS ACT, 1997**

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**ATTENTION:**

**Submitted by: ILITHA LABANTU**

**Email: [Admin@Ilithalabantu.org](mailto:Admin@Ilithalabantu.org)**

**Research and Preparation by: Simnikiwe Maboe, Unati Pangwa**

**Email: [Simnikiwe@Ilithalabantu.org](mailto:Simnikiwe@Ilithalabantu.org), [Unati@Ilithalabantu.org](mailto:Unati@Ilithalabantu.org)**

**With input from: Simnikiwe Maboe, Unati Pangwa**

**Email: [Simnikiwe@ilithalabantu.org](mailto:Simnikiwe@ilithalabantu.org), [Ellen@Ilithalabantu.org](mailto:Ellen@Ilithalabantu.org)**

**emailed to : [Commentdraftlegislation@treasury.gov.za](mailto:Commentdraftlegislation@treasury.gov.za)**



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## **INTRODUCTION**

Ilitha Labantu, established in 1989, is a social justice community organisation based in Gugulethu township, Cape Town with a specific focus on addressing violence against women, children, vulnerable groups and supporting those affected by it. Its services include psycho-social services, legal and policy advocacy services, educational and outreach services as well as community nutrition and development services.

The NPO Act 71 of 1997 provides a comprehensive and enabling framework for the regulation and development of non-profit organisations in South Africa. By balancing accountability with support, the Act promotes transparency, sustainability, and collaboration—strengthening the role of civil society in social and economic development

Ilitha Labantu broadly supports Parliament's objective of strengthening safeguards to ensure that non-profit organisations (NPOs) are not misused for criminal purposes, including money laundering and the financing of terrorism. Protecting the integrity of the sector is essential to maintaining public trust and safeguarding beneficiaries.

However, Ilitha Labantu raises significant concerns regarding the proposed amendments to the Nonprofit Organisations Act 71 of 1997:



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## 1. Shift in the Directorate's Role

The amendments appear to transform the NPO Directorate from an administrative and supportive regulatory body into an enforcement authority.

- The Directorate was originally designed to **facilitate registration, promote good governance, and support compliance**.
- Expanding its role to include enforcement powers without corresponding constitutional safeguards may create legal and governance risks.
- Unlike independent constitutional or Chapter 9 institutions, the Directorate does not currently enjoy the **institutional independence or protections** required when exercising punitive powers.

This shift may expose the Directorate to legal challenges and undermine trust between civil society and the state.

## 2. High Penalties Under Section 30

Section 30 introduces significant penalties for non-compliance.

Ilitha Labantu is concerned that:

- Severe penalties may disproportionately affect small and community-based NPOs with limited administrative capacity.
- Fear of criminal sanctions could deter smaller organisations from registering.



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- Reduced registration could weaken transparency rather than strengthen it.

### **3. Impact on Beneficiaries**

If smaller NPOs choose not to register or close due to compliance burdens:

- Vulnerable communities may lose access to essential services.
- Grassroots development efforts may be disrupted.
- The very beneficiaries the Act seeks to protect could be negatively affected.

Many smaller NPOs operate in under-resourced areas and provide critical services that government cannot always reach directly.

### **4. A Balanced Approach**

Ilitha Labantu supports stronger oversight mechanisms but recommends that Parliament:

- Ensure enforcement functions are aligned with constitutional principles of administrative justice.
- Provide proportional, risk-based compliance measures.
- Strengthen support and capacity-building mechanisms for small NPOs.
- Avoid creating a regulatory climate that discourages civic participation.

Ilitha Labantu affirms the importance of preventing financial abuse and terrorism financing within the NPO sector. However, it cautions that



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amendments which expand enforcement powers without adequate constitutional safeguards—and which impose heavy penalties—may unintentionally weaken the sector. A balanced, supportive, and proportionate regulatory framework is essential to protect both accountability and the vital services delivered to South Africa’s most vulnerable communities.

Section	Comment
<p><b>Section 5(e)</b></p> <p>Functions of the Directorate to include the monitoring and enforcement of compliance with the Act by non-profit organisations to whom the Act applies.</p>	<p>The Directorate for Nonprofit Organisations, which operates within the Department of Social Development, has been granted enforcement powers under the proposed amendments to the Nonprofit Organisations Act 71 of 1997.</p> <p>However, the Directorate:</p> <ul style="list-style-type: none"> <li>• Is not institutionally independent;</li> <li>• Forms part of the executive branch;</li> <li>• Does not enjoy constitutional protections comparable to independent oversight bodies.</li> </ul> <p>Granting enforcement authority to a body that lacks structural and operational independence raises serious concerns about fairness, accountability, and constitutional compliance.</p>



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## **Constitutional Considerations**

Under Section 33 of the Constitution of the Republic of South Africa, 1996, everyone has the right to administrative action that is:

- Lawful
- Reasonable
- Procedurally fair

Where an enforcement body is structurally limited or lacks independence, there is a risk that:

- Decisions may not consistently meet standards of fairness;
- Affected organisations may not have adequate recourse;
- Trust in the regulatory framework may be undermined.

This is particularly concerning where enforcement powers include deregistration, compliance directives, or penalties that may significantly affect an organisation's ability to operate

## **Impact on Fundamental Rights**

Overly broad or improperly safeguarded enforcement powers may also impact constitutional rights, including:



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- Freedom of association (Section 18)
- The right to just administrative action (Section 33)

If organisations fear arbitrary or unfair enforcement, this could discourage civic participation and weaken the non-profit sector. In turn, this affects beneficiaries who rely on NPO services.

### **Recommendation: Establish an Independent Appeals Body**

To safeguard constitutional principles and strengthen accountability, it is recommended that:

- An independent appeals body or tribunal be established;
- The body operates separately from the Department of Social Development;
- It provides impartial review of enforcement decisions;
- Clear procedures for appeal and review be codified in the Act.

An independent appeals mechanism would:

- Enhance fairness and transparency;
- Protect constitutional rights;



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	<ul style="list-style-type: none"> <li>• Strengthen legitimacy of enforcement actions;</li> <li>• Promote trust between civil society and government.</li> </ul> <p>While strengthening oversight of the NPO sector is necessary to prevent abuse and financial misconduct, enforcement must comply with constitutional standards. Without institutional independence and proper safeguards, the expansion of the Directorate’s powers risks undermining fair administration and fundamental freedoms. Establishing an independent appeals body would provide a constitutionally sound and balanced solution.</p>
<p><b>Section 14(1)(a) (b) (3)(4)(5)(6)(7)(8)(9)</b></p> <p>Director to impose administrative sanctions</p>	<p>The Bill provides that a person or organisation wishing to appeal a refusal of registration or the imposition of a penalty must submit that appeal to the Directorate itself.</p> <p>This raises a fundamental concern:</p> <p>The Directorate is the same body that:</p> <ul style="list-style-type: none"> <li>• Made the original decision; and</li> <li>• Imposed the penalty.</li> </ul>



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Requiring an appeal to be considered by the very authority that issued the decision creates a serious risk of procedural unfairness.

Section 14 of the Bill, as currently framed, raises concerns regarding:

- Institutional independence
- Procedural fairness
- Impartial review

An appeal mechanism must not only be fair, but must also be *seen to be fair*. Where the reviewing authority is the same body that made the original determination, there is a reasonable perception of bias.

This undermines confidence in the regulatory framework.

Section 33 of the Constitution of the Republic of South Africa, 1996 guarantees the right to:

- Lawful administrative action
- Reasonable administrative action
- Procedurally fair administrative action

An essential component of procedural fairness is access to an independent review or appeal mechanism.



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An appeal body must:

- Be structurally separate from the original decision-maker
- Exercise independent judgment
- Be perceived as impartial

If the Directorate reviews its own decisions, this does not meet the standard of independence required under Section 33.

## **Recommendation**

To align the Bill with constitutional principles and ensure fairness, it is recommended that:

- An independent appeals body or tribunal be established;
- The body operates separately from the Directorate and the Department of Social Development;
- The Act clearly outlines procedures for independent review;
- Decisions of the Directorate be subject to impartial oversight.

An independent appeals mechanism would:

- Strengthen constitutional compliance
- Enhance public confidence



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	<ul style="list-style-type: none"> <li>• Protect the right to just administrative action</li> <li>• Promote balanced and accountable regulation</li> </ul> <p>While the objective of strengthening oversight of the NPO sector is supported, the current appeal structure in Section 14 does not sufficiently safeguard independence and fairness. Establishing an independent appeals body is necessary to ensure compliance with Section 33 of the Constitution and to protect the integrity of the regulatory system.</p>
<p><b>Section 20 (1)(b)</b></p> <p>Extend the appeal in respect to administrative sanction</p>	<p>The proposed amendment grants the Director the power to impose administrative penalties where an NPO fails to comply with Section 29 of the Nonprofit Organisations Act 71 of 1997.</p> <p>While compliance enforcement is necessary to ensure accountability and transparency, the proposed penalty framework raises important concerns.</p> <p>The administrative penalty system, as currently framed, may:</p> <ul style="list-style-type: none"> <li>• Emphasise punishment over corrective action;</li> </ul>



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- Fail to distinguish between minor administrative errors and serious misconduct;
- Disproportionately affect smaller or under-resourced NPOs;
- Create fear rather than encourage compliance.

Section 29 primarily relates to reporting and governance obligations. In many cases, non-compliance may stem from:

- Administrative capacity challenges;
- Lack of technical expertise;
- Resource constraints;
- Delays rather than intentional wrongdoing.

A purely punitive approach may undermine the developmental and supportive objectives of the Act.

### **Recommendation: Clear Regulations on Sanctions**

It is recommended that:

- Detailed regulations be published setting out clear categories of non-compliance;
- Sanctions be graded from least severe to most severe;



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- Corrective measures (such as compliance notices, warnings, or support interventions) be prioritised before penalties are imposed;
- Administrative penalties be reserved for serious, repeated, or intentional breaches.

A structured sanction framework would:

- Promote fairness and consistency;
- Enhance transparency;
- Reduce arbitrary decision-making;
- Encourage voluntary compliance;
- Align enforcement with constitutional principles of reasonableness and proportionality.

While strengthening oversight of NPO compliance is supported, the administrative penalty system must be proportionate, transparent, and corrective in nature. Publishing clear regulations that outline graded sanctions for different types of non-compliance would ensure that enforcement strengthens the sector rather than discouraging participation or undermining service delivery.



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## Section 30

Provide for maximum penalties for offences

We welcome the clear intention that where non-profit organisations are misused for fraud, money laundering, or the financing of terrorism, there must be appropriate and serious consequences. Protecting the integrity of the sector is essential to maintaining public trust and ensuring that resources reach intended beneficiaries.

We understand that the application of penalties relates specifically to the offences listed in Section 29 of the Nonprofit Organisations Act 71 of 1997. Ensuring compliance with reporting and governance requirements is necessary for transparency and accountability.

However, there is concern that the proposed penalty regime, if not clearly structured and proportionate, could unintentionally harm the non-profit sector by:

- Deterring organisations from registering;
- Discouraging civic participation;
- Slowing the growth and development of the sector;
- Creating fear among small and community-based organisations.

Many NPOs operate with limited administrative capacity and rely on volunteers. A compliance



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system perceived as overly punitive may reduce formal registration and weaken transparency rather than strengthen it.

## **Recommendation: Clear and Proportionate Sanctions in Regulations**

It is recommended that detailed regulations be published to clearly outline:

- The minimum and maximum penalties applicable to different categories of non-compliance;
- A graduated system of sanctions, ranging from minor administrative breaches to serious criminal conduct;
- Clear differentiation between:
  - Late or incomplete reporting,
  - Repeated administrative non-compliance,
  - Serious governance failures,
  - Gross misconduct such as fraud, money laundering, and terrorism financing.

Administrative penalties for minor non-compliance should be proportionate and corrective in nature, while severe penalties should be reserved for intentional or criminal misconduct.



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	<p>While strong action against fraud, money laundering, and terrorism financing is fully supported, the penalty framework must be carefully designed to avoid discouraging legitimate organisations from registering and operating. Clear, transparent, and proportionate regulations will protect both the integrity of the sector and the vulnerable communities that depend on its services.</p>
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## Conclusion

Ilitha Labantu supports the objective of preventing the misuse of non-profit organisations for criminal purposes, including fraud, money laundering, and the financing of terrorism. Strengthening accountability within the sector is essential to maintaining public trust and protecting beneficiaries.

However, the amendments introduced in the Bill raise constitutional concerns, particularly in relation to Section 33 of the Constitution of the Republic of South Africa, 1996, which guarantees the right to lawful, reasonable, and procedurally fair administrative action. The current framework does not sufficiently ensure institutional independence in monitoring, enforcement, and appeals processes.



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We therefore urge Parliament to:

- Reconsider the amendments to ensure alignment with constitutional principles of fairness and independence;
- Establish an independent body to preside over monitoring, enforcement, and appeals relating to compliance with the Nonprofit Organisations Act 71 of 1997;
- Reassess the sanctions framework to include clearly defined minimum penalties;
- Ensure that smaller and community-based NPOs are not deterred from registering due to disproportionate or overly punitive penalties.

A balanced approach is required—one that firmly addresses criminal misuse while safeguarding constitutional rights, promoting fairness, and supporting the continued growth and sustainability of the non-profit sector.