repubblika

A CIVIL SOCIETY MOVEMENT

MEMORANDUM

To: Malta Council for the Voluntary Sector
From: Repubblika
Date: 6 April 2021

Voluntary Organisations (Public Collections) Regulations (S.L.492.03.) and Voluntary Organisations (Charity Shops) Regulations (S.L.492.04.).

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Executive Summary

Repubblika appreciates the need to ensure that financial criminals are not permitted to avail themselves of the vehicle of voluntary organisations to act as fronts to cover their crimes.

We find that the regulations introduced under the Voluntary Organisations Act in September 2020 fail to introduce measures that can realistically contribute to a clampdown on money laundering and financial crime. Even as they fail in what appears to be their primary justification, the new regulations suffocate fundamental freedoms of law-abiding citizens preventing them from associating or from freely expressing their views.

This memorandum:

1. restates considerations of non-negotiable freedoms for voluntary organisations and for people who freely choose to financially support them, in order to clarify the red lines the State should not presume to cross in a democracy;

2. analyses the regulations introduced in September 2020 providing a critical assessment of their reasonable practicality and what we feel are the threats they imply to non-negotiable freedoms; and

3. recommends a way forward.

The regulations published in September 2020 are burdensome and intrusive. They ignore the fact that NGOs that are enrolled with the Commissioner for Voluntary Organisations already provide information about their financial activities. New measures such as permits to raise funds or to engage volunteers are unnecessary and do nothing to help flush out money laundering.

Similarly, rules on collections using collection jars and home-dropped envelopes, raffles and collections during mass events make the processes impractical. The new rules increase time and cost in bureaucratic procedures and reduce access for law-abiding voluntary organisations to donations that are fully compliant with the law.

These measures will suffocate genuine NGOs such as cultural, sports and charity organisations but will do nothing to combat financial crime.

The regulations also empower the government to sanction, censor and in effect ban NGOs who express views or campaign for policies that the government disagrees with or disapproves of.

We are recommending that the regulations - that were introduced without any consultation with the voluntary sector - are rescinded and that effective consultations are opened to introduce rules that meet the declared objective of combating financial crime without encroaching on the fundamental freedom of people to associate in NGOs and the freedom of people to donate to causes they support.

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Introduction

Our organisation campaigns for the rule of law and has consistently argued for, and applied pressure on the authorities to implement, measures to deny opportunities to financial criminals.

We are also acutely aware that pretend voluntary organisations exist at the present moment conducting suspicious activities that ought to be appropriately investigated for possible criminal activity, including money laundering. Like other activities such as restaurants, retail outlets, gambling operations, casinos, churches, schools, “gentlemen’s clubs” and several others, voluntary organisations too can be used to launder the proceeds of crime and to cover up criminal activity.

The authorities understand that just because some restaurants are indeed a front for money laundering, it is neither feasible nor desirable to nationalise all restaurants and operate them as an extension of the State. Rules of financial transparency when conducting a restaurant business exist to give the State the power to investigate and act against wrongdoing. But no one would seriously consider requiring restaurants to operate under the constant shadow of government control.

In the case of voluntary organisations, it is also important to find a balance between the need to deny criminals a tool for their crimes and the obligation of the State to give all the space necessary for the voluntary sector to thrive.

The role of government in the State

Repubblika's statute, adopted on its foundation on 25 January 2019, asserts in its Article 4 the following:

The Association believes that the individual should be served by government and should not be the servant of government and shall seek that the following rights and freedoms are at all times protected from any intrusion by any government or state authority:

1. The right of individuals to form, join and participate in the Association and or any civil society organisation embracing any legal or lawful purpose particularly the promotion and protection of human rights and fundamental freedoms shall be paramount and inalienable.

2. This freedom shall be free of artificial barriers and any requirement for the achievement of legal status must be truly accessible with clear, speedy, apolitical and inexpensive procedures and any designated authority must be guided by objective standards and restricted from arbitrary decision making with speedy and effective recourse for citizens who are not well served by such designated authority.

3. The Association asserts its own right and the right of all associations of persons to operate free from State intrusion or interference in their affairs and to ensure that any regulation is predicated upon appropriate considerations in a society governed by the Rule of Law and that the laws of Natural Justice shall prevail in all circumstances to ensure the free and transparent application of the law.

4. The Association asserts its own right and the rights of all individuals and associations of persons to express its ideas in any manner it deems fit and that the only permissible restrictions on such freedom shall be predicated on the protection of interests that would not otherwise be properly protected by ex post facto redress in the event of abuse.

5. The Association considers it has the right to communicate and seek cooperation with other representatives of civil society, the business community, and international organisations and government, both within and

outside Malta. Individuals and organisations have the right to form and participate in networks and coalitions in order to enhance communication and cooperation and to pursue legitimate aims.

6. The Association considers that in seeking to assemble it should not be required to obtain permission to do so while it recognises that public order considerations should guide it in the manner in which it exercises this right. Spontaneous assembly where the giving of notice is impracticable is inherent in the right of assembly.

7. It is the obligation of the State to ensure that all assemblies, spontaneous or planned, are afforded the right to exercise this right and likewise all counter-assemblies shall be afforded the same right.

8. The Association asserts its right to seek and secure funding from legal sources, including individuals, businesses, civil society, international organisations, and inter-governmental organisations, as well as local, national and foreign governments.

9. The Association asserts that the State has a duty to promote respect for human rights and fundamental freedoms, and the obligation to protect the rights of civil society. In this regard, the State's duty is both negative (i.e., to refrain from interference with human rights and fundamental freedoms) and positive (i.e., to ensure respect for human rights and fundamental freedoms). The State's duty includes an accompanying obligation to ensure that the law is appropriately enabling and that the necessary institutional mechanisms are in place to ensure the recognised rights of all individuals.

In the present context, and applying the assertions listed above, we would therefore highlight the following considerations and concerns:

1. In and of itself, the existence of a Commissioner of Voluntary Organisations does not encroach on the fundamental liberties of associations. Nor does the Voluntary Organisations Act as it exists constitute in and of itself a breach of these basic rights. However, we have noticed a pattern of action by this agent of the State that oversteps legal limits and does indeed constitute a threat to freedom of association and freedom of expression.

2. The existence of an association of like-minded people acting on a non-profit basis in the public interest is not contingent on any form of sanction or authorisation by the State. The right to association is not in the gift of public authorities and it cannot, therefore, be denied by pre-emptive action by the government or one of its agents by, for example, refusing to enrol it in a public register or denying it permission to operate or raise funds to conduct its business.

3. No one, not even voluntary organisations, is above the law. The right to free association does not extend to a right for that association to, for example, launder money. But all legal persons, including voluntary organisations, are entitled to due process before they are penalised for wrongdoing. Implicitly, they are also entitled to the presumption of innocence which must be reflected in the conduct of the State when it relates to them. There is no reason for the government to behave in a way that looks like it assumes all voluntary organisations exist to launder money. Preemptive punishment is not acceptable. If an association and those using it as their front commit crimes, they are to be duly punished after the fact, and after the fact is proven according to a process established at law.

4. Associations that campaign for changes to legislation, to promote their faith or political convictions, or to mobilise opinions on matters of public affairs are, by definition, organisations acting in the public interest. This is not qualified by whether the faith or views they express is consistent with government policy. With few exceptions, such as the promotion of hatred against legally defined groups, incitement to crime and or violence or undermining the security of the public, disagreement with the government is an irrelevant consideration for any action by the State.

5. By extension, the free choice exercised by persons to financially support these associations is, in and of itself, an act of free expression of opinion, protected and privileged at law. Any attempt by a government agency to prevent the free funding of public interest organisations is a breach of the right to free expression of those who wish to provide the funding.

6. All voluntary organisations that conduct lawful activities that are not intended for profit but are instead intended to contribute to the public good, should not be restrained. The freedom to associate and give up one's time, energy and money for the good of others cannot be restrained for the simple purpose of

ensuring that no one pretends to be contributing to the good of others while acting unlawfully in their own interests. A comparison with restaurants is again appropriate. Within the rules of, say, hygiene, quality and planning, the right of anyone to open a restaurant cannot be curtailed by the risk that someone might open a restaurant to launder proceeds from drug trafficking.

S.L.492.03

Applicability

Our first objection to the new regulations comes from the fact that it creates a redundant but double hurdle for lawful associations to conduct their business.

We appreciate the need to create a face value distinction between voluntary organisations that are voluntarily willing to submit their financial affairs to public scrutiny and those who would rather hide it.

We, therefore, do not contest the government's policy not to provide public funding to associations that refuse to be enrolled, though we have reservations in this regard that we will elaborate on further in this document.

We also appreciate that enrolled organisations must provide the authorities with financial information that can help authorities detect suspicious transactions and, if appropriate, demand further verification by independent auditors, or refer to law enforcement agents for further investigation on the back of reasonable suspicion of wrongdoing.

The enrolment process and any compliance process for an association to retain its status as an enrolled organisation, serve to give the authorities access to information that could provide comfort that enrolled organisations are complying with the law.

This, then, serves two purposes. It casts light on non-enrolled voluntary organisations that, by virtue of their refusal to enrol and therefore disclose any information about their financial conduct, attract specific attention by the authorities. And, within the ranks of enrolled voluntary organisations, it gives the authorities early warning of potential wrongdoing.

We clarify that we accept the need for this. But this was already addressed by the Voluntary Organisations Act in and of itself before these new regulations were promulgated.

The new regulations make the Act, and the enrolment it provides for, entirely irrelevant. Organisations that are enrolled are now required to solicit the permission of the authorities every time they intend to seek funding, meaning that the effort to comply with the law in order to be enrolled and to be retained on the register has been rendered pointless.

This suggests, wrongly, that voluntary organisations require funding exceptionally and occasionally and can, under normal circumstances do without it. Associations that do not need funding, do not need to enrol under the Act. Associations that enrol under the Act, implicitly require funding.

The double examination and the request for permission for funding are, to begin with, administratively burdensome and irrelevant.

But they also encroach on the right of any association acting lawfully (and to prove its intentions, also enrolled under the Act) to operate freely from, and without intrusion by, the government.

It should be clear that there is no legitimate voluntary operation that can exist without funding. Someone must pay the costs. The costs may be covered by the volunteers themselves or, as happens in most situations, the costs are covered by other persons who wish to support them.

Each time a voluntary organisation is required to ask for permission to raise these funds, it is effectively being required by the State to justify its existence and to justify the voluntary work it wishes to undertake. That is, in and of itself, an encroachment on the right of association of the volunteers and on the right of free expression of the donors.

S.L.279.01

The only material eligibility criterion required by the Public Collections Regulations for one to be a collector is for the collector to be at least 14 years of age (increased to 16 by the present regulations). However, the Public Collections Regulations grant the Commissioner of Police discretion to refuse approval to anyone to act as collectors. The exceptional nature of the activities covered by these regulations can justify this sort of discretion.

However, S.L.492.03 transfers the same level of unilateral discretion from the Commissioner of Police to the Commissioner for Voluntary Organisations.

This completely ignores the fact that enrolled voluntary organisations have already provided the Commissioner for Voluntary Organisations, with all the information the Commissioner should need to make a more permanent assessment of the credentials of the organisation raising funds. The information is handed up to the Commissioner as part of an organisation's enrolment and it is incumbent on the organisations to update that information with periodic returns and submit themselves to audits required by the Commissioner.

This level of unilateral discretion, where the Commissioner can refuse permission to an enrolled organisation to engage a collector that is not to his liking, is in this context unacceptable.

Capping the validity of a permission that is granted to three months, requiring any authorised collector to submit themselves to the Commissioner's discretion four times in a year is an administrative impediment to the proper functioning of organisations.

Some organisations have volunteer collectors that have worked for them all their lives. They have raised money honestly and without personal reward in their own time for the causes they held dear. Now they need to sit for a test of authorisation by the government every 3 months and have their tag issued by the government replaced every 6 months because otherwise their voluntary work has been criminalised and the funds they collect grabbed by the government.

The process for authorisation of collectors that is prescribed in the regulations is most likely drafted by someone who has never had to organise a collection for a good cause. The regulations require collectors to be tagged individually by the Commissioner after processing a written application containing personal details, a passport photo, and endorsements from multiple administrators. This is a long and painful process which rules out spontaneous collection, vital for several organisations.

Anyone who works in the sector would confirm that finding volunteers is hard and drop-outs are frequent and turnover high.

The question begs itself. What does this procedure achieve? Surely, voluntary organisations that have been vetted and approved by the Commissioner and have their frequent returns reviewed and verified by them, can be trusted to recruit collectors they trust to act on their behalf. After all, donors will only contribute to organisations they trust to spend their money wisely and that wisdom necessarily includes recruiting collectors that can be trusted.

Of course, if voluntary organisations have reason to suspect that any of their collectors are stealing money, the organisations become victims, not perpetrators, and they would act to protect their interests and the interests of donors.

It is clear to us that a law on confiscation of illegal donations should be applied in cases where these tools are used to front the laundering of millions for some drug trafficking operation. Instead, the regulations are empowering the Commissioner to apply these rules to the village volunteer who collects money for the *festa* decorations.

This is clamping down on people who work for their community and does nothing to catch the criminals that steal from it.

Collection containers

The requirements in the new regulations are, quite simply, impractical. They are also disproportionate to the material risks of collection in collection containers. And they are intrusive.

Voluntary organisations collect money for charitable or public purposes as a matter of course. There are laws (that the regulations themselves refer to) that are applicable and must be enforced when people are misled into providing donations for a cause when the funds collected are used for other purposes.

If one advertises a commercial product by providing false information about what the product does, they are liable to criminal action and consequence. We certainly agree that if someone calls for donations in favour of a cause that is false, they too should be liable to the same criminal action and consequence.

But no one suggests that before anyone advertises commercial products they must first submit the advert and the product to some public authority and they can only accept payment in the presence of some government official. Any action against unlawful activity is taken after the fact. There is no reason why voluntary organisations should be treated differently.

Also, when one is using a fake voluntary organisation to launder their money, they are unlikely to do so by throwing coins in poppy appeal jars. A money-laundering operation is likely to attempt to filter cash in amounts far greater than most voluntary organisations collect, and certainly a different order of magnitude of cash than all the money that could fit in their collection jars.

In any case, any organisation with nefarious intent can by-pass this process by using its own containers to collect the bulk of the money and use the official containers as a cover for that activity. Will that justify then unannounced inspections by the Commissioner and their commissars on premises of the organisations?

The State has an obligation to ensure that the handling of cash is tightly regulated to avoid money laundering. Rules such as the immediate deposits of funds received, declarations of income and other ex-post control procedures are eminently justified.

A nanny state that expects to physically oversee the sealing and unsealing of charity coin piggy banks, however, makes a mockery of the process and reduces voluntary organisations to the status of helpless and ipso facto suspicious wards of the State.

Envelopes

Requiring people who refuse to donate money in envelopes left in their homes to send back the empty envelope to the collecting organisation is, at best, unrealistic. The requirement seems to suggest that if an organisation fails to account for all the (numbered) envelopes it has left in households or points of potential donation, then the organisation is implicitly suspected of having done something wrong. This is, at best, grossly unfair.

The numbering of collected envelopes also creates the perception for donors that they are being evaluated on whether they have made a donation and the size of the

donation. This is, ironically, a form of pressure on people to donate when they do not wish to. It is a new and unjustified risk of a breach of privacy.

And given the expected backlash, it risks diminishing funding for voluntary organisations that depend on donations of this nature, particularly band clubs and other town- and village-based societies.

The requirement to use “warranted professional persons” to testify to the vetting of funds raised by an organisation assumes that only warranted professionals are either honest or capable of counting money or both.

The measure increases costs to the organisation raising funds and does nothing to address the true problems of money laundering, which isn’t counting the money left by voluntary donors supporting their local fireworks factory but counting the money that “warranted professional persons” launder for drug lords, corrupt politicians and human traffickers.

Public collections carried out in public places

The requirement for collectors to remain at fixed positions with a distance of not less than thirty metres between one collector and another is impractical and an unnecessary hindrance. Collections during public protests, concerts, religious gatherings and other mass events require an ambulatory arrangement for collectors if collections are to succeed.

The regulation would seem to abolish the age-old method of stretching out a donation net at the end of a stick while members of a congregation are seated at an outdoor mass. We do not see why this was a problem that needed solving by government regulation.

The regulation being introduced appears to be entirely arbitrary and we do not understand why it is necessary.

Trading activities

The administrative requirements, including but not limited to the engagement of professional services for endorsement of “written agreements”, are disproportionate and excessive considering what possible contribution these restrictions might make to combating money laundering. The risk of laundering money through the donation of “magazines and, or books" is negligible. Therefore this complex procedure appears to seek to address a problem that does not materially exist.

The threshold for the imposition of the more egregious requirements on activities worth anything over €5,000 a year is absurd. This is a very small amount which essentially makes this means of raising funds impractical.

Incidentally, imposing regulations to somehow restrict the dissemination of written material suffocates the work of voluntary organisations to spread literacy, information and culture in the community, reducing accessibility to people who would possibly only purchase these materials when combined with the perceived added value of giving money to a good cause.

Promotion of public collections

Advertising is regulated by other laws. We do not understand why there should be specific rules regulating advertising to raise funds for charities or voluntary causes. And we especially do not understand why the Commissioner for Voluntary Organisations should consider themselves an authority which is competent in this regard.

The regulations, for example, rule out “indecency” and “ambiguity”. Decency is covered by advertising rules. The legal trend has been to reduce the role of the government as the censor of public expression. This seems to reverse that trend.

The rule on “unambiguity” is too ambiguous for comment.

The regulation goes on to forbid “exaggeration”, “likelihood to cause fear” and “distress to the public”. We are beside ourselves at the idea that the government is giving itself the discretion to decide what the public should not be told by voluntary

organisations on the basis that the government might deem it an exaggeration or likely to cause the public fear or distress.

We mention some examples. Climate change, we feel, should cause fear and distress in the public. Many, even many in politics and the administration, would suggest that scientific accounts of climate change are “exaggerated”. Are we empowering the Commissioner for Voluntary Organisations to rule on such matters and preventing voluntary organisations from expressing their free views?

This links to another point we made earlier. We stated above that we do not contest the government’s policy not to provide public funding to associations that are not enrolled. Similarly, we accept that enhanced scrutiny of the financial activities of organisations that refuse to enrol is justified.

However, this cannot be acceptable in combination with the government abusing its authority to strike off or deny enrolment to organisations purely on the basis that the views expressed by that organisation or the causes it campaigns for are inconsistent with government policy.

This is not just about matters of opinion or controversy. If by way of example, the government finds itself under political pressure to reduce fireworks, it should not be able to do so by exercising some discretion to prevent fireworks enthusiasts from raising funds.

The combination of the power to administer the enrolment of voluntary organisations in order to have a right to access funding with the presumed and illegitimate authority to delist organisations on a discretionary basis is, in and of itself, an outrage to the democratic principles of free association and free expression.

This specific regulation, although it is limited to the content of adverts, indicates the intention of the Commissioner to use the law to determine what is indecent, ambiguous, misleading, exaggerated or likely to cause fear, disturbance and distress to the public.

We must put this in context of the action taken by the Commissioner against Repubblika, publicly confirming the intention to delist us on the grounds of political opinions expressed in articles written by officials within the organisation and of submitting written views to a public inquiry.

By this token then, the Commissioner could decide to delist an organisation for “exaggerating” the environmental impact of a new road, or because an organisation or group of organisations call for public protest on a cause close to their heart which the Commissioner deems a “disturbance”, or because an organisation campaigns against the legalisation of marijuana which the Commissioner determines an “exaggeration” of the harms it causes, or because an organisation campaigns against abortion by showing pictures of aborted foetuses because the Commissioner determines the images “indecent”, or because an organisations campaigns for the introduction of abortion because the Commissioner rules that the campaign is “distressing”.

The possible list of reasons for the Commissioner to censor (or de-list and effectively ban) a voluntary organisation is endless. Can we expect sanctions against objections to development outside development zones, against the condemnation of the collusion between criminals and public figures, or against the insistence that migrants are not allowed to die at sea? If these sanctions are not applied now, do we have any assurance that these powers could not be used at some future stage?

The principle of an independent civil society requires that no one in government retains the authority to decide what civil society thinks, says or does about such matters.

We insist that the delisting of an organisation, in the context when only enrolled organisations are legally permitted to raise funds without implicitly raising suspicion of wrongdoing, is an effective ban of that organisation and silencing of the views of the members of that organisation and those who seek to donate funds to its cause.

Cap. 342 and Cap. 583

In broad terms, unless specifically exempted, voluntary organisations must comply with all laws. The specific references to other laws in the new regulations, however, appear to intend to clamp down on any liberal interpretation of the law for one-off events intended to raise funds for good causes.

It appears therefore that a beachside game of bingo to raise money for a club is being treated as a casino operation handling millions. And a charity auction for a

date with a fireman is being treated like an auction of private art collections of dubious provenance.

If the intention is to make sure that money launderers do not use the front of a fake voluntary organisation to mix up their illicit gains with cash generated from gambling or high-value art, we need a less lazy definition in the regulations to capture these circumstances.

Instead this blanket ban punishes everyone just in case someone gets away with it.

Responsibilities and functions of management

While it is both reasonable that voluntary organisations are permitted to delegate managers the function of raising funds and that such delegation is regulated to ensure transparency and propriety, these provisions appear to contradict the clauses regulating collectors which the regulations say cannot be compensated for collecting funds.

Indeed the regulations say that when collectors are also, in the course of their duties, undertaking any other paid activity, they shall not be considered as collectors.

In several situations, managers and collectors are one and the same. These clauses require revision to eliminate ambiguity.

Processing and collection of donations

We understand that once a breach of national laws and regulations has been established, the Commissioner should have the power to disallow the continuance of any fundraising or public collection. The regulations are, however, silent on the question as to who will determine that there has been “a breach of national laws and regulations”.

If it is the Commissioner themselves that will exercise this authority, then we clearly need some form of due process. We have seen that the present Commissioner has acted in such a way as to incorporate in a single communication a request for

information on the conduct of an organisation, a determination that the organisation has acted wrongfully, and a sanction. All this without any opportunity for the organisation concerned to a defence or any recourse to reconsideration or appeal after that ruling.

This is clearly unacceptable. It effectively amounts to the erection of a Commissioner with the dictatorial powers of a princeling.

The purpose of the rule forbidding collectors from being on private premises that are open to the public where a lawful collection is underway is not understood.

Also, the required distance from pedestrian crossings, market stalls or street performers, though not necessarily a material inhibition, seems to have an obscure purpose.

Review Procedures by the Commissioner

We find this section entirely misguided and are disappointed that these provisions depart from the functions of the Commissioner as required by the enabling law that established them.

The Commissioner is not the policeman of the voluntary sector. The voluntary sector does not require and should not be singled out for single-issue policing. All voluntary organisations, like all legal persons, and all volunteers, employees, donors and beneficiaries within the voluntary sector must abide by the law and the agencies set up by law to enforce the law must act against any unlawful activity. That is why we have a financial intelligence agency and a police department.

The voluntary sector needs a Commissioner to (as provided by the Voluntary Organisations Act):

- Provide organisations with information;
- Provide information and guidelines to volunteers “for the better achievement of the objectives of the voluntary organisations in which they serve”;
- Recommend policies “in support of voluntary organisations, volunteers and voluntary work”;

- Assist other government departments “in support of voluntary organisations and the voluntary sector in general”;
- Cooperate with the Voluntary Council to develop policies “of benefit to the voluntary sector”.

To be sure the law requires the Commissioner “to monitor the activities of voluntary organisations in order to ensure observance of the provisions of (the Voluntary Organisations Act) and any regulations made thereunder”. That means that monitoring activities should be focused on compliance with the voluntary organisations’ law, not with supplanting the authority of law enforcement agencies by policing voluntary organisations as if they existed outside the republic.

In fact, the law also obliges the Commissioner to “promptly disclose” information they become aware of to the FIAU (or any other relevant agency) if they “discover facts or obtain any information which raise suspicion that funds received by a voluntary organisation could be proceeds of criminal activity”.

Of course, that should be the Commissioner’s duty.

If an organisation fails to provide timely financial returns; if the organisation receives a suspicious donation from a suspicious source; if the organisation pays its “employees” or “service providers” inexplicable sums of money; if the organisation’s activity and presence are not proportionate to its declared revenue and income, then by all means that organisation should be looked into and any wrongdoing met with the action required by the law. And that action is to be delivered by the specialised agencies set up by law to act in these circumstances.

What the new regulations do instead is transform the Commissioner for Voluntary Organisations into a mishmash of incompatible functions that should rightly never belong to any single entity. The Commissioner authorises voluntary organisations to function, hand-holds them through their operation, tries, convicts, punishes, and abolishes any organisation they alone decide are out of order, without due process.

All of these rules are naturally fulfilled at the expense of the core function of the Commissioner to protect civil society and voluntary organisations and to ensure that other government departments and agencies do not act in a way that suffocates their freedoms.

Testamentary dispositions

Although we are all for proper regulation to ensure there is no exploitation of any vulnerable person, soliciting testamentary dispositions by voluntary organisations is an entirely legitimate means of promoting fundraising for many NGOs in ordinary democracies. This is especially, though by no means limited to, the case of organisations raising funds for research, treatment or care of illnesses.

The rule as drafted prevents the solicitation of this form of funding, which we consider draconian.

We are also concerned about the nullification of testamentary dispositions as a consequence of the unilateral decision of the Commissioner to “dis-enrol” an organisation, particularly in view of the arguments raised above about the unacceptable and anti-democratic grounds the Commissioner has already applied in the case of Repubblika.

It would seem that the unhindered powers the office of the Commissioner has given itself by these regulations extend to the power to ignore the dying wishes of voluntary donors leaving a legacy to causes they support.

S.L.492.04

The Commissioner's discretion to refuse the authorisation or the registration of a charity shop should, like all administrative decisions, be only applied in case of failure to meet predetermined and objective criteria for eligibility, after the applicant has been given the opportunity to cure legitimate reservations raised by the Commissioner, and subject to appeal.

The current extent of unquestionable discretion provided for in the regulations is unacceptable.

Recommendations

We take a very dim view of “temporary” commitments by the Council on behalf of the Commissioner not to enforce regulations that are in force. Therefore the “moratorium” negotiated by the Council and the decision to waive fees for applications for permits to collect donations, while appreciated for their practical effect, are in themselves evidence of the shoddy manner with which the regulations were introduced and a recognition that at least some of their provisions are manifestly impractical.

No regulation or law directly affecting a part of the community should be introduced without consultation with those affected by it. This is a principle of good governance that has been completely overlooked in this case.

Furthermore, no regulation or law that risks encroaching on fundamental rights should be introduced without an objective and clear assessment of those risks and consideration of the mitigation measures needed to manage them. This didn’t happen either.

Our first recommendation, therefore, is for both regulations introduced in September 2020 to be rescinded forthwith.

We would then call upon the Commissioner for Voluntary Organisations and competent agencies such as the FIAU and the Police Department for consultations with voluntary organisations on drawing up regulations that address the legitimate law-enforcement concerns, which, we reiterate, we entirely share.

It should be clear that changes to legislation that have an impact on voluntary organisations must be adopted only after appropriate and open consultation with them. Changes are to be announced and communicated to voluntary organisations well ahead of the date when they enter into force. Consideration must be given to the fact that voluntary organisations have, by definition, limited resources both in terms of time and staffing.

The authorities should not assume that voluntary organisations are equipped with the expertise to understand legislation and turn it into operational processes. Voluntary organisations need to be briefed about changes in rules in a language they can understand and training is to be provided to them to adapt.

We recall several past annual reports by the Commissioner's office that lamented the lack of resources made available to fulfil the functions established by the law. This matter needs to be addressed with due priority given to the need of the Commissioner to acquire the capacity of understanding the realities in which voluntary organisations operate. The lack of appreciation of voluntary work that is reflected in these draft regulations is execrable.

We also reiterate our appreciation of the need of records, audits and formal verification of processes. But we are perplexed at how much the authorities appear to underestimate the cost of these activities. Consideration is given when administrative burdens are imposed on profitable businesses. Why is that not the case for voluntary organisations?

The authorities should consider providing tax incentives or breaks for professionals providing pro-bono services to enrolled voluntary organisations such as legal, accounting, book-keeping, auditing, HR management, security and other professional services.

Similarly, transparency in donations can be better achieved if the government recognises donations to voluntary organisations declared in tax returns and rewards the same with tax breaks or other tax incentives.

As voluntary organisations, and as volunteers serving the interest of the community, we have no desire to be of any help to criminals getting away with financial crime or money laundering.

But we have no intention of accepting unlawful edicts or governmental overreach that would have the effect of preventing us from exercising our fundamental freedoms whether on the pretext of the malicious intent of criminals or because of a clumsy and incompetent set of regulations that chase law-abiders and allow law-breakers to get away with their crimes.

We will safeguard our rights and the rights of civil society and all voluntary organisations by all legal means available to us. This is not merely our right. It is our duty and our call as provided by our Statute as quoted earlier in this document.

We remain at the disposal of the authorities to provide our input in the drawing up of fair and effective regulations.

We also expect the Commissioner to adjust their focus back to the scope determined for them in the Voluntary Organisations Act and to transition back from the current role of being a bane for the voluntary sector into being the facilitator and supporter they are meant to be.