

Siyakha Today

Issue Three 30 March 2005

EDITORIAL

Being new to the non-profit sector, I recently read a book that increased my understanding and appreciation as to the importance of a legal and regulatory environment for civil society. The book titled: "An Enabling Framework for Civil Society in South Africa: Circle of Power", edited by Owen Stuurman and Riaan de Villiers, is a synopsis of the key findings of a conference held in 1996 that dealt with "Enabling Frameworks for Civil Society in Southern and Eastern Africa". It was at this juncture in civil society history that organisations identified the need for stronger participation in the policymaking process, greater tax benefits and increased partnerships between government, civil society, business and the donor community.

Now, into the second decade of democracy, I find that we are asking the same questions, as we did prior to and during the 1996 conference. There is a distinct undercurrent of change within civil society. Most notable is the rapidly evaporating pool of donor aid available to the more than 100 000 non-profit organisations (NPOs) operating across eleven sectors within South Africa. Meanwhile, NPOs are re-considering the 'ingredients' necessary for a vibrant civil society that is both partner to government and watchdog, for safeguarding and promoting democracy. This is positive for benchmarking our progress and redefining what constitutes an enabling legal environment that promotes social and economic development.

Increasingly, government and civil society are recognising that strong collaboration is a necessity for achieving this. In President Thabo Mbeki's words and reiterated by Finance Minister Manuel in his 2005 Budget Speech: *"Acting together, we do have the capacity to realise these objectives. And sparing neither effort nor strength, we can and shall build a South Africa that truly belongs to all who live in it, unified in our diversity"*.

Government is certainly trying to strengthen NPOs. Extremely welcome to Public Benefit Organisation (PBOs) are the intended legislative changes to the limitations on trading activities announced by Minister Manuel. For the full story turn to page 3.

NPC continues to expand its work around increasing civil society participation towards this objective. To increase our effectiveness we have entered into a partnership with The International Centre for Non-Profit Law (ICNL) to provide us with technical assistance in order to increase our capacity to reform South Africa's non-profit law.

In this issue, we bring you the latest developments around the current Company Law Review. We also invite NPOs to provide us with their comments and suggestions around the changes they would like to see to the Income Tax Act, the National Development Agency (NDA) and the National Lottery Distribution Trust Fund (NLDTF). We believe that with your input, we can make meaningful changes that will speak to the needs of the sector more appropriately. By completing the questionnaire (loose insert) you could be one of five lucky organisations to receive a valuable resource for fundraising titled: Fundraising for The New Millennium by Jill Ritchie.

In our next issue, we bring you great ideas about social enterprising and how you can really take control of your organisations sustainability!

We look forward to your comments and hope that you enjoy this edition of Siyakha. Let us know what you would like to read more about.

Michelle Thulkanam
Communications Manager

**NPC Tax Exemption
Deadline Campaign a
Huge Success.**

PAGE
2

**2005 FINANCIAL
BUDGET** brings relief
to PBOs

PAGE
3

**Update on the
Companies Act
Review Process.**

PAGE
4

**Governance - Getting
the Right Fit for your
Organisation**

PAGE
5

**Funding Crisis?
Is the Disbursement
of Statutory Funds
getting to you?**

PAGE
6

INTERNATIONAL NEWS
What would it take to
really get **Global
Philanthropy** Going?

PAGE
7

**New Appointments &
Announcements**

PAGE
8



NPC TAX EXEMPTION DEADLINE CAMPAIGN A HUGE SUCCESS !

By Kyle Reinecke

Numerous non-profit organisations (NPOs) that were previously exempt from paying tax under the old provisions of the Income Tax Act across South Africa buckled down to submit their tax exemption applications in time for the 31 December 2004 deadline to maintain their tax exemption status.

In the month leading up to the deadline, NPC conducted an extensive media campaign to inform NPOs of this deadline. The campaign received widespread coverage via newspapers, radio stations, television and other publications. A major highlight for NPC was the television coverage it received on the SABC 2 current affairs programme. *The World Today*.



Tracy Fortune, Director of NPC, interviewed by Leanne Mol on SABC 2 *The World Today* to inform NPOs of the tax exemption deadline

Our campaign targeted two groups of NPOs. Firstly, those that were exempt from paying tax under the old provisions of the Income Tax Act and wanted to maintain this status. Secondly, we also aimed to inform those organisations that had not previously been exempt, but wanted exemption with effect from their date of inception.

From the start of the campaign, NPC fielded a barrage of calls, in-house consultations, emails and letters requesting information as to whether they were affected by the deadline and how to apply to SARS.

From 15 November to 31 December 2004, NPC handled more than 100 enquiries from NPOs to ensure that organisations met the criteria in time for the deadline.

WHAT HAPPENS AFTER SUBMITTING YOUR APPLICATION?

SARS currently has a two-year backlog with tax exemption applications, so count yourself fortunate if you receive a definitive answer on your application within two years.

Should your organisation not receive confirmation that your application was received within three months after submitting your tax exemption application, it is strongly recommended that you contact SARS to determine whether your application was received. We also urge organisations to obtain a written acknowledgment of receipt.

Our sincere thanks go out to all those that helped spread the word especially Mr Alfred Kowo, Head of SARS Tax Exemption Unit. It is with great sadness that NPC says goodbye to Mr. Alfred Kowo who has left the Tax Exemption Unit. He was always extremely helpful and supportive of our work.

At the same time, we welcome his replacement Mr. W. S. Beukes and hope to continue our good working relationship with him as the Head of SARS Tax Exemption Unit.

CALLING ALL NPOs TO SUBMIT COMMENTS TO IMPROVE THE INCOME TAX ACT

NPC is presently working on a Tax position paper, which aims to increase the tax benefits available to NPOs. The paper also aims to improve the administration and implementation of the Income Tax Act.

The paper will form the basis of our lobbying efforts. Please let us know about your experiences or suggestions for improving the Income Tax Act.

Please email your comments to info@npc.org.za or fax your comments to 021-422-3329.

2005 FINANCIAL BUDGET

BRINGS RELIEF FOR PUBLIC BENEFIT ORGANISATIONS (PBOs) INVOLVED IN TRADING ACTIVITIES

Source: SARS Tax Exemption Unit



PBOs generating an income from woodwork, pottery and crafts enables them to be self-sustainable.

Minister Manuel announced that the revenue laws this year would contain measures to assist PBOs that rely in part on income from business activities. Currently the Income Tax Act allows exempt PBOs to conduct business activities within certain prescribed limits. Where the trading activities fall outside these specified parameters, the consequences are that the PBO might lose the exempt status in totality with immediate effect, if these activities are not transferred to a separate taxable entity.

SARS believes that current moves to separate the business activities from core public benefit activities could result in an unnecessary administrative burden for the PBOs. In terms of present legislation, exempt PBOs may retain any business undertaking or trading asset acquired before 1 January 2001 for a period of five years until 1 January 2006 without losing their exempt status.

The proposed changes in legislation are meant to allow for a partial exemption for PBOs engaged in business activities without losing their exempt status. This means that the income from business or trading activities undertaken by PBOs in excess of certain limits will become fully taxable, whilst income relating to the public benefit activities will remain exempt from income tax.

As from the effective date of the proposed amendment introducing the partial exemption, PBOs will have the option to retain their business activities. Where a PBO is uncertain whether or not to transfer the business activity in order to comply with present legislation, it is recommended that no steps be taken in the interim until the proposed legislation is promulgated.

Further inquiries may be referred to: The Tax Exemption Unit at (012) 422 8800 or email: teu@sars.gov.za

Photo's courtesy of **Zenzele Training & Development, an NGO based in Khayelitsha** that provides skills training, entrepreneurial development and business support to individuals living in the most underdeveloped and poverty stricken communities in the Western Cape.

UPDATE ON THE COMPANIES ACT REVIEW PROCESS

By Tessa Brewis & Kerryn McKune

Non-profit organisations (NPOs) that are eagerly awaiting the new Companies Act will need to brace themselves for a longer wait than expected.

Tshepo Mongalo, the Project Manager of the Company Law Review commented: *"The initial timeframes that were set were too optimistic, as the Department of Trade and Industry (DTI) realised that it was critical to conduct thorough public consultations to ensure that the needs of the key stakeholders could be addressed."*

Consultations were conducted throughout the country and research undertaken to ensure that South African Company Law is aligned to international trends.

NPOs that were expecting to receive the final policy document by early February 2005, must now wait until the end of March 2005.

It is expected that the new Act will make provision for a separate form of company for NPOs. This company will be specifically suited to NPOs and will not be as complicated as the existing Section 21 Company.

Furthermore, they will no longer be deemed to be public companies as is currently the case. This means that they will no longer have to deal with some of the stringent regulations directed at the for-profit public companies.

NPC, in partnership with the Legal Resources Centre, worked extensively with the DTI from the start of the review process. NPC hopes to secure as much support from the sector as possible in its attempt to constantly draw the Department's attention to the difficulties that the non-profit sector currently faces when establishing non-profit companies.

Simultaneously, NPC is continuing its rigorous research into international best practice in this area of law for the most suitable solution for a simpler and more accessible non-profit corporate entity.

The DTI estimates that it will be at least another two years before the new Companies Act comes into operation, which anticipates more efficient regulation of for-profit and non-profit companies. Throughout the coming two years, there will be occasions for further input from the public, so be sure to watch out for these opportunities.

ANTICIPATED TIMEFRAMES FOR NEW COMPANIES ACT

| | | |
|------------------|--|--|
| End-Mar 2005 | Publication of final policy document | Will be available to the public on www.thedti.gov.za |
| Apr end-Nov 2005 | Process of drafting the Bill | Key Stakeholders will be consulted on specific details |
| End-Nov 2005 | Draft Bill will be published | In the new year, DTI will conduct Public meetings throughout SA |
| Jun 2006 | Draft Bill is sent to the State Law Advisors for certification. Then it is submitted to Parliament | The Portfolio committees may, at their discretion, hold public hearings. DTI will conduct information session throughout SA to assist compliance with the new Act. |
| Feb 2007 | Adopted by Parliament | |
| End-March 2007 | Proclaimed by the President and gazetted | |

Please contact the DTI or NPC for further information.

GOVERNANCE - GETTING THE RIGHT FIT FOR YOUR ORGANISATION

By James Senokwanyane

In the world today, donors are looking at the organisation's board of directors to ensure effective delivery on their mission and greater sustainability. Organisations themselves should also recognise the importance of their boards and the role they play.

HOW TO GET THE RIGHT FIT

It is important to note that people serving on your board have a mixture of skills, for example human resource management, financial management, marketing etc. to give proper guidance and direction to your organisation. When selecting board members, organisations should guard against having a list of prominent and well-known people who do not really carry the interest of the organisation at heart, but should look for those who are committed and willing to serve and contribute positively to the development of poor people.

Some NPOs confuse governance with the actual management and day-to-day running of the organisation, resulting in uncertainty about the role of the board and management. It is therefore important to bring clarity to this issue by quoting R.I. Tricker who wrote that "If management is about running the organisation, then governance is about ensuring that it is run properly". This brings a clear distinction on the roles and responsibilities of the two structures.

The board of directors controls 'from the top' by giving guidance to the organisation, and management is involved with the implementation of daily activities within the organisation.

In view of this, when composing your board, or re-electing board members, it is helpful to ask the following;

Does your organisation have the right combination of skill on its board?

Does your board know its roles and responsibilities?

Are there any areas where conflict of interest may occur?

Does it have mechanisms in place to deal with conflict?

In our next edition of Siyakha we will cover in more detail these aspects, so that your organisation may be more effective in achieving good governance.

For further assistance, NPC offers advice and workshops about how to effectively establish a board to achieve good governance. Contact us at 021-422-3413 or email us at info@npc.org.za

James Senokwanyane and Phillip Balie from Balie Smith Management & Development Consultants come together to discuss their experiences of NPO governance in South Africa, to develop a handbook to assist NPOs in setting up effective boards.



FUNDING CRISIS?

IS THE DISBURSEMENT OF STATUTORY FUNDS GETTING TO YOU?

By Kerryn Mckune & Michelle Thulkanam

In an effort to improve the access and distribution of funding to the NPO sector, NPC monitors the legislation, implementation and organisational experiences with Statutory funding bodies; the National Development Agency (NDA) and the National Lottery Distribution Trust Fund (NLDTF).

Recently the NDA have reviewed their strategy to continue contributing towards the eradication of poverty and its causes. The National Lotteries Board have just celebrated five years of existence and a total allocation of over R2.2 billion has been allocated to 5 000 beneficiaries.

However, many NPOs are experiencing difficulty around accessing government/statutory funding. We have also received reports from NPOs that while they have received acknowledgement that their applications were successful, these funds are not reaching them timeously.

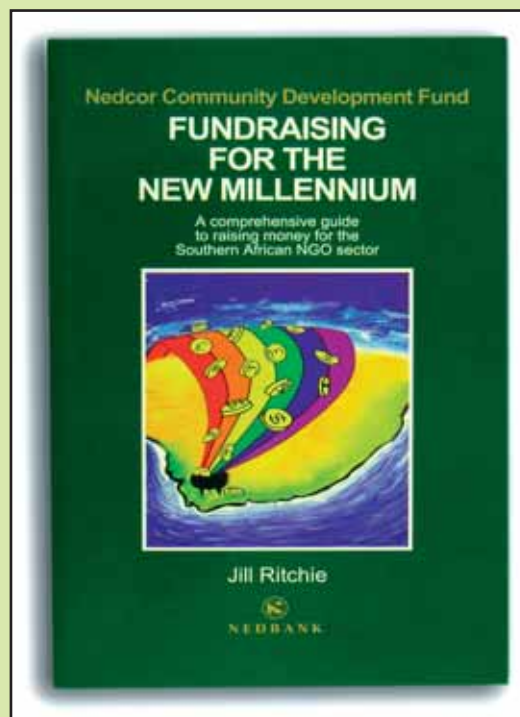
NPC is concerned about these reports and invites you to provide us with your input by filling in the survey enclosed. Your comments will be used to lobby for the improved administration, implementation and disbursement of these funds. This will also assist statutory bodies gain greater insight on how to improve their systems.

Take 10 minutes to complete the survey and your organization could be one of five lucky organizations to stand in line to win a fabulous resource on fundraising titled: "Fundraising for the New Millennium: A Comprehensive Guide to raising money for The Southern African NGO Sector" by Jill Ritchie. Published through the generous support of the Nedcor Community Development Fund and Nedbank.

The book provides detailed guidelines for fund development in Southern Africa from the reknowned author of four previous guides to fundraising.

You will get in-depth information on:

- New fundraising legislation;
- Proposal writing;
- Foreign fundraising;
- Marketing and PR for charities;
- Fundraising ideas;
- Capital campaigns;
- Fundraising for political parties;
- Organising congresses;
- Cause-related marketing, and
- Donor Lists (local and foreign?)



TAKE 10 MINUTES TO ANSWER 7 QUESTIONS AND GET YOUR VOICE TO SECURE YOUR FUTURE, TODAY!

WHAT WOULD IT TAKE TO REALLY GET GLOBAL PHILANTHROPY GOING?

Source: Alliance Extra March 2005

In its December 2004 edition, Alliance held a roundtable on increasing global philanthropy with a panel of respondents involved in the field from around the world.

From the ensuing debate, two things stood out most clearly: the need to create a new culture of giving among individuals, and the need to make it easier for them to give, both by simplifying the process and by assuring them that their donations are going to reliable groups.

These deliberations formed the basis of a subsequent online discussion hosted by Social Edge in February, but by this time a massive new element had been added to the debate - the tsunami.

Would it be the stimulus for a new phase of increased global giving, or would the massive philanthropic urge subside once the disaster had disappeared from the world's front pages and from public consciousness?

Charles Cameron (Rheingold Associates) felt that, ironically, an early effect of the tsunami had been to divert giving away from other areas of need. The awesome scale of the disaster has exerted a massive gravitational pull on both media attention and giving.

'Tax incentives largely irrelevant to people's giving'

This had been the general view of roundtable panellists. And surely tax incentives are unlikely actually to make people give. 'After all,' as Alliance's Caroline Hartnell put it, 'even if I get a tax benefit, giving to charity will still cost me money.'

But Yvonne Morgan (CAF South Africa) felt that panellists had understated the potential of tax incentives. She cited a recent CAF survey of employees of two South African firms in which 99 per cent of those surveyed said they would consider giving under a payroll-giving scheme if there was an immediate tax benefit.

From his experience of Global Giving's workplace giving scheme, Dennis Whittle felt that tax deductibility does remain critical, at least in the US and particularly among wealthier donors.

Simon Hebditch at CAF UK felt that while 'cause and commitment come ahead of tax incentives', such incentives are a bonus to donors, especially at the wealthier end of the spectrum. For Svitlana Kuts from the Ukraine, what is important is government policy on the matter. 'There should be clear government policy on tax deductions for philanthropy,' she feels, 'so people understand that they are giving to publicly accepted causes.'

Personal connection

Dennis Whittle, from his own experience at GlobalGiving, said people want to have some direct connection with a project or with other donors.

Robert Daoust (Algosphere Enterprise) was even more categorical on the need for personal involvement. 'Money will never suffice, personal involvement is necessary first and foremost.'

What's the use of philanthropy?

Mal Warwick felt that the biggest problem faced by developing countries is not a lack of philanthropy from the Global North but 'a dramatic economic imbalance between poor countries and rich ones'. 'There are two ways that philanthropy from rich countries can truly help poor people in the Global South rise out of poverty,' he argues. 'By providing capacity-building funds and tools, we can help them build home-grown institutions with the ability to generate local resources, making them truly self-sufficient. We can also fund much broader and more far-reaching efforts to identify sound, successful locally run NGOs that have demonstrated the capacity to make a difference in their communities. Philanthropy is at its best when we help them - in the ways that they want us to help.'

This is an abridged version of the article originally published in the March edition of Alliance Extra. Please visit www.allavida.org/alliance for the full text or please email Anand Shukla at anands@allavida.org

New Appointments & Announcements

NPC welcomes **RICARDO WYNGAARD** as the NPO Legal Support Services Project Manager. Ricardo previously worked at the Legal Resources Centre as an attorney within the NPO Support Project since November 2000. He brings with him a deep passion for social development. Ricardo has extensive experience working as a Project Implementer within the Security of Farm Workers Project at Lawyers for Human Rights. During 1996 he was appointed as candidate attorney in Caledon at the firm of Bosman & de Villiers in terms of the Overberg Pilot Project, which was a joint-initiative between the Legal Aid Board and Lawyers for Human Rights. The Project was aimed at promoting access to justice in the rural areas.



NPC'S LONGSTANDING PARTNER, THE CHARITIES AID FOUNDATION SOUTH AFRICA (CAFSA) appointed a new CEO - **MVELI GOODWIN DIKO**. Mveli joins CAFSA with a strong educational and civil society background. Mveli worked as project manager for the Swiss Agency for Development and Co-operation and then as Provincial Director for the National Business Initiative (NBI) on its Education Quality Improvement Partnerships before joining the National Department of Education (DOE), as Director where he managed the Presidential Urban Renewal and the Integrated Sustainable Rural Development Programmes, while supporting provincial education departments in managing poverty alleviation programmes.



We also wish to express our sincere gratitude to **EUGENE SALDANHA** who was an active boardmember of NPC since its inception. Eugene resigned during November 2003. was an active board member of the NPC since its inception. His visionary and inspiring leadership, vast knowledge and institutional memory of NPC's humble and yet great beginnings will be sorely missed. We wish Eugene tremendous success in all his future endeavours.



ANNOUNCEMENT:

NPC is delighted to announce a new era of co-operation with the International Centre for Not-for-Profit Law (ICNL). As part of its Global Technical Assistance Project (GTAP), ICNL will provide technical assistance to support the activities of the NPO Law Programme. The project kicked off in March with a visit to South Africa by Steven Klingelhofer, Senior Vice-President of ICNL in Washington DC. One of the main purposes of this relationship is to assist in building the capacity of NPC and its partners here in SA in the field of non-profit law.

This publication was made possible through the generous funding of **Atlantic Philanthropies and the Charles Stewart Mott Foundation**

