



**DEPARTMENT OF SOCIAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA**

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ABBREVIATIONS

CBO	Community Based Organisation
CSI	Corporate Social Investment
CIPRO	Companies and Intellectual Property Registration Office
DoA	Department of Agriculture
DFID	Department for International Development
DOJ	Department of Justice
DRC	Development Resources Centre
DSD	Department of Social Development
DTI	Department of Trade and Industry
DWAF	Department of Water Affairs and Forestry
ECD	Early Childhood Development
FBO	Faith Based Organisations
LRC	Legal Resources Centre
NCASA	National Cooperative Association of South Africa
NDA	National Development Agency
NGO	Non Governmental Organisation
NPO	Non-profit Organisation
NPP	Non-profit Partnership
NPC	Non-Profit Consortium
NPO	Non-Profit Organisation
NPO Act	Non-profit Organisations Act No. 71 of 1997
PBO	Public Benefit Organisation
RDP	Reconstruction and Development Programme
SAGA	Southern African Grantmakers Association
SANGOCO	SA NGO Coalition
SARS	South African Revenue Services
SCAT	Social Change Action Trust
Umhlaba	Umhlaba Development Services
USAID	United States Agency for International Development
VA	Voluntary Association

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DISCLAIMER

This Report has been commissioned by the Department of Social Development. The contents of this document are not the opinion of the Department and can under no circumstances be regarded as reflecting the position of the Department.



PREFACE

For much of the 1980s, Nonprofit Organisations (NPOs) had played a significant role in challenging the injustices of apartheid, and addressing the needs of vulnerable communities. Recognising this, the South African Government enacted the Nonprofit Organisations Act 1997, (No 71 of 1997) as part of its intention to create an enabling environment for the non-profit sector. This legislation was conceived as part of the project to transform society. It is a result of a lengthy process of policy and legislative reform initiated by government and negotiated with civil society organisations.

The NPO Act mandated the Department of Social Development to create an administrative and regulatory framework within organisations can conduct their affairs by providing a voluntary registration facility. It has been implemented for the last seven years since 1998. To date over 38 000 non-profit organisations has been registered by the Department.

The process has not been easy, however, and many challenges have emerged. Some of these relate to the difficulties of monitoring an increasing number of NPOs, while attempting to ensure that public funds are well managed and safeguarded. Other challenges relate to the role of the NPO Directorate to enhance standards of good governance within the NPO sector, and promote greater benefits for NPOs. Various stakeholders have been discussing these pertinent issues in different forums. These discussions and issues raised have necessitated the need to assess the impact that the Act has made within the sector. It is good practice, and is in the interest of responsive, relevant and effective service delivery, that government legislations and policies be reviewed at regular intervals.

To this end, the Department of Social Development conducted an impact assessment on the NPO Act, to determine how it has affected the NPO sector in South Africa. An independent research consultancy, Umhlaba Development Services was contracted to conduct the study on behalf of the Department.

The Research was conducted between July and November 2004, and involved a national sampled survey of NPOs, as well as discussions with selected key government, civil society, and private sector stakeholders. Of particular significance, the study sought to respond to pertinent questions including: Has the registration contributed to a more enabling environment for the sector? Do the provisions of the Act and the work of the Directorate create an enabling administrative framework for the sector? What benefits have been derived from the implementation of the Act? These are but some of the questions that this study explored.

In carrying out the study, a Reference Group composed of key role players within the sector was formed to provide an important feedback mechanism throughout the different phases of the study. Our sincere gratitude goes to the members of this Reference Group and the organisations they represented. These are: CBO Network (the South African Chapter of the Community Organising Regional Network), Charities Aid Foundation Southern Africa (CAFSA), Department of Agriculture: - Registrar of Cooperatives, South African Early Childhood Development Congress (SA ECD Congress), Legal Resource Centre (LRC), National Development Agency (NDA), Non-Profit Partnership (NPP), S.A NGO Coalition (SANGOCO), Tax Exemption Unit of SARS, and Richard Rosenthal Attorneys.

Organisations and individuals who took part in the various aspects of the study are also acknowledged for the immense contributions they have made to the success of this exercise.

The Department of Social Development foresees these recommendations from this study would lead to more efficient and effective interventions to enhance the ability of NPOs to operate effectively.





1. EXECUTIVE SUMMARY

Umhlaba Development Services (Umhlaba) was contracted by the Non-profit Organisations Directorate within the Department of Social Development to conduct a study in July 2004. The purpose of the study was to assess the impact of the NPO Act of 1997 on Non-profit Organisations in order to make recommendations in line with the findings of the Assessment, and the needs of the sector.

The design of this assessment focused on determining the impact of the Act on NPOs, donors, and other agencies working with the non-profit environment through a research process. The research process utilised a combination of research methodologies, including a national telephone survey of NPOs, in-depth interviews, focus groups and case studies. In total the assessment conducted over 930 interviews with NPOs, government, donors, and other stakeholders. This assessment is therefore the largest study on this issue to date in South Africa, and offers an extensive information base for a variety of NPO stakeholders. The Telesurvey database may serve as an important baseline study for future longitudinal surveys and studies.

In order to assess the impact of the NPO Act on the NPO sector in South Africa, five key themes were drawn from the five objectives of the Act. These are:

- (i) Creating an Enabling Environment
- (ii) Establishing an administrative and regulatory framework within which NPOs can conduct their affairs
- (iii) Encouraging NPOs to maintain standards of governance, transparency and accountability, and to improve those standards
- (iv) Creating an environment within which the public may have access to information concerning registered organisations
- (v) Promoting a spirit of co-operation and shared responsibility within government, donors and other interested persons

While the assessment found that government as a whole has become significant in its breadth of support and engagement with the NPO sector, the resources and implementation capacity for the NPO Act is severely lacking. The financial resources allocated for the implementation of the Act are insignificant when compared to the size, scope and vibrancy of the NPO sector on the one hand, and the complexity of the NPO Act on the other. The allocation of responsibility to a Directorate within the Department of Social Development, and the limited financial resources made available to this Directorate, have - in the researchers' opinion - constrained the potential impact of the Act.

Given the enormous amounts of energy and input into the formation of the NPO Act, it is somewhat surprising that the overall impact of the Act has been uneven, and in some cases quite limited. The assessment has found that the impact of the Act has been high in the administrative and regulatory environment, somewhat less in the establishment and maintenance of standards in the NPO sector, and quite limited in the overall scope of government-donor-NPO relationships.

Of particular concern is the limited extent of awareness of, and engagement with the NPO Act by a range of key stakeholders engaging with the Non-Profit environment. It is significant to note that the majority of funding organizations interviewed in this assessment do not require NPO registration in order to fund an organization. Similarly this assessment has found that national government departments are generally unaware of the content and prescripts of the NPO Act, and have structured their own engagement with NPOs without much impact from either the Act, or the NPO Directorate.

A clear limitation that has emerged from the assessment with respect to impact is the lack of clear definition of the benefits of NPO registration. The primary motivations for registration by NPOs has been because they thought it compulsory, from an expectation of increased funding, and the potential





for taxation benefits. The assessment has found that in all respects the actual benefits accruing to NPOs have been limited, and those that have benefited have tended to be larger NPOs more often registered primarily as Section 21 Companies or Trusts.

In light of this, the sustainability of the impact of the NPO Act remains questionable over the longer term. If the benefits are unclear, and there is a continuation of limited engagement by a range of governmental and donor agencies, NPOs will reconsider the motivation for registering, especially in the face of the perceived administrative burden of registration and compliance.

Perception of enabling environment differs between categories of respondents. South African government departments, perhaps not surprisingly, feel that an enabling environment exists for NPOs in South Africa. They point to policy features that enhance the potential for NPO engagement in policy, planning, and implementation of government programmes, as well as enhanced opportunities of government funding of NPOs. In the main, donors feel that there is an enabling environment for NPOs in South Africa, although there is an important distinction in responses. Donor agencies that were established by the South African government were most likely to say that there is an enabling environment, while local South African grantmaking organizations (that work most directly with community based and grassroots organizations) were most likely to say that the environment is not enabling.

Most of the small, emergent Community Based Organisation (CBO) participants in this assessment felt that the environment for civil society participation in the general development arena in South Africa has improved. They point to a number of factors, including that the numbers of community-based organisations (CBOs) have increased since the introduction of the NPO Act, and some of the smaller community based organisations and structures have managed to acquire a more organised and formalised status.

The assessment has found the regulatory environment to be somewhat inconsistent and fractured, leading to a reduction in overall efficacy and impact of the NPO Act. Also, the assessment found clear problems with a "one size fits all" approach to NPOs inherent in the NPO Act. The assessment has found that the lack of recognition given to different categories of NPOs affects them in different ways. Small emergent CBOs are often unable to meet the minimum standards set by the Act and the Directorate, and as a result struggle to maintain compliance. Larger, more sophisticated organisations feel the NPO registration adds to the administrative burden, while undermining their "blue chip" status with certain donors.

This assessment has found the benefits to NPOs to be limited, and that this is at odds with high expectations amongst NPOs. Smaller NPOs, especially CBOs, also bemoan the administrative burden of registration and compliance with the Act, and the overall cost of compliance. This point is somewhat reflected in the limited levels of narrative and financial reporting found in the survey of different types of NPOs, indicating a general difficulty amongst NPOs to meet their reporting requirements. Despite this, awareness of the NPO Act and the registration process is relatively high and increasing, and there are growing numbers of registered NPOs. This in itself reflects the emergence of a large number of localised, community-based structures established for public benefit. Administratively, the increase is creating further difficulties for the NPO Directorate, which is faced with capacity limitations.

A particularly striking feature of the NPO sector emerging from this assessment is the general lack of capacity within NPOs to manage their affairs, and to deliver quality services. This situation poses the greatest threat to efforts to maintain high standards across the sector. The NPO Directorate currently seeks to improve standards through the production of good practice guides and standardised templates, and through desktop monitoring of reports. While this assessment indicates that many NPOs appreciate these measures, and that they have incorporated some of these documents into their day-to-day functioning, a number of gaps and criticisms remain.





The assessment has found that the status of NPO registration, and the quality of organisational practice presumed, is widely questioned by a variety of NPO stakeholders. Donors, NPOs themselves, and government officials working with NPOs have expressed misgivings on the levels of compliance and standards of governance, operation and accountability within NPOs who have successfully registered. There is a general sense of limited practical implementation of good practice guidelines by the NPOs themselves. A particular feature that has emerged relates to poor standards in financial reporting. There is a need to address this weakness, and to step up monitoring. Enforcing compliance to minimum standards of financial management is necessary if NPO registration is to be considered as being meaningful. This poses a huge challenge, not only for the Directorate, but also for the entire sector and its stakeholders. It is imperative that some form of coordinated monitoring of compliance to basic standards and documenting of good practice is developed for the sector, especially across the various registration procedures and legal identities

There seems to be a general consensus amongst all stakeholders that the current collation and dissemination of information is inadequate. Consistent criticism has been directed through the assessment at the current form of information gathering and collation, and the way this information is made available. The current information system seems adequate specifically for the purposes of registration, but seems to offer limited opportunity to provide more significant monitoring data. A specific area of concern to many NPOs, especially in the health and welfare sector, is a perceived lack of transparency with regard to the awarding of grants to NPOs. The key concern in this respect relates to the perceived potential for inappropriate awards of grants, and perceptions of potential corruption. This weakness is indicative of the general lack of integration of information management across departments and provinces with regard to NPOs and the NPO sector, which presents a clear challenge to a comprehensive approach to NPOs from government.

The assessment has found the role of the NPO Directorate to be limited in building partnerships between government, donors, and NPO networks. There has been significant criticism from national NPO networks in particular, who allege that the Directorate has in effect circumvented them in their activities with NPOs. A critical component of cooperation is the synchronisation of procedures and programmes between departments, especially with registration and disbursement schedules. This often has adverse effects on NPOs. Of particular concern is the lack of provincial coordination regarding NPO programmes and regulation.

Given the findings of the assessment, three primary recommendations have been made. Specific recommendations for additional measures related to each of these recommendations are made in the report.

Recommendation 1: Minister to Address the Fragmented Regulatory Framework.

The Minister should facilitate a process to assess and align relevant legislation, to allow for an integrated regulatory framework that allows for consistency within the legal framework for registering NPOs. This will require high-level political facilitation between the relevant Ministries for Trade and Industry, Justice, and Finance, as well as SARS.

Recommendation 2: Revise the Act to Allow for Differentiated NPO Registration.

The NPO Act should be revised to allow for registration of different categories of NPOs, which recognises different levels of capacity amongst NPOs. This will allow for more targeted programmes from government, civil society actors and donors, and would set appropriate standards for different NPOs in place.

Recommendation 3: Allocate Sufficient Resources and Capacity for the Implementation of the NPO Act.

The South African government should commit much greater resources for the overall implementation of the NPO Act. In the immediate term, this would require a significant increase in the current budget and human resource capacity for the efficient implementation and administration of the Act within the Department of Social Development. This will require immediate availability of resources to address severe capacity constraints within the Directorate, and to address backlogs with regard to applications.





2. INTRODUCTION

Umhlaba Development Services (Umhlaba) was contracted by the Non-profit Organisations Directorate within the Department of Social Development to conduct a study in July 2004. The purpose of the study was to assess the impact of the NPO Act on Non-profit Organisations, in order to make recommendations in line with the findings of the Assessment, and the needs of the sector.

2.1 Methodology

2.1.1 Introduction

The design of this assessment focused on determining the impact of the Act on NPOs, donors, and other agencies working within the non-profit environment through a research process. The research process utilised a combination of research methodologies, including a national telephone survey of different types of NPOs, in-depth interviews, focus groups and case studies. In total, the over 930 interviews were conducted with NPOs, government, donors, and other stakeholders. This assessment is therefore the largest study on this issue to date in South Africa, and offers an extensive information base to a variety of NPO stakeholders. The Telesurvey database can serve as an important baseline study for future longitudinal surveys and studies on the sector.

The different components of the research were implemented simultaneously, with regular research team meetings to inform each research group of potential adaptations to each methodology as the research process progressed.

In order to address the key areas of interest, a Theme Indicator Matrix (see *Appendix 1*) was developed which provided a framework for the study. The development of this framework document highlighted themes to be assessed, the indicators to be addressed in each theme, and the sources these questions should be targeted at. The Theme Indicator Matrix was adapted throughout the duration of the study as additional areas of investigation arose.

The inclusion of a Reference Group appointed by the Department of Social Development, provided an important feedback mechanism for the Umhlaba Research Team. The Reference Group met every 6 weeks throughout the duration of the research process. Key research milestones were presented to this group. Comments and recommendations by this group were integrated into the various phases of the research process.

2.2 National Telephone Survey ("Telesurvey")

The purpose of the Telesurvey was to gather information with particular reference to different types of Non-profit Organisations, with a focus on the following issues:

- Structure and affiliation of the organisation.
- Capacity of the organisations (human and financial resources as well as engagement with for instance, tax issues).
- Awareness of the NPO ACT as well as experience with the NPO Directorate in the Department of Social Development.
- Perceived benefits of registration as an NPO.
- Perceptions of the enabling environment.

2.2.1 Telesurvey Sample

The Telesurvey included the following sample groups:

- i. NPOs registered with the Department of Social Development. This sample includes Voluntary





- Associations as well as organisations that are otherwise registered as Section 21 companies, Trusts or Cooperatives. 535 organisations were included in the sample of this group, of which 525 interviews were eventually usable.
- ii. Voluntary Association registered with DSD as NPOs only. The primary data set mentioned in (i) above included a small number of organisations that maintain dual registration with more than one regulatory body. These organisations then, apart from being registered as NPOs with DSD, may also be registered as Section 21 companies (11 organisations on this database representing 2.1% of the entire dataset), Trusts (8 organisations representing 1.5% of the entire dataset), and Cooperatives (6 organisations representing 1.1% of the entire dataset of 525). These dual registered organisations totalled 25 in number (4.7% of the entire data set). These dual registered organisations were removed from the data set reducing it to 500, upon which a separate analysis was conducted.
 - iii. Non-profit Organisations registered with the Department of Trade and Industry as Section 21 companies. 55 organisations were included in the sample of this group, of which 54 interviews were eventually usable.
 - iv. Non-profit Organisations registered with the Department of Justice as Trusts. 55 organisations were included in the sample of this group, of which 51 interviews were eventually usable.
 - v. Voluntary Associations not registered with any of the formal regulatory bodies. 51 organisations were included in the sample of this group.
 - vi. Co-operatives registered with the Department of Agriculture. 100 organisations were included in the sample of this group, of which 98 were eventually usable.

Altogether 796 organisations participated in the telesurvey, of which the interviews from 779 of them were eventually used for analysis. The analysis was conducted on each of the five groups separately. Because the samples were drawn from different databases, representing different populations, they could not merge them into one big data set. Instead, the largest data set (that of NPOs registered with the Department of Social Development) as the primary set for the analysis, and supplemented it with the smaller data sets for purposes of comparison and contextualisation.

The vast majority of organisations included in the primary data set were Voluntary Associations registered *only* with the NPO Directorate (95% of the sample). A small number of organisations in this data set maintained dual registration (mostly as Section 21 companies or Trusts). In a similar manner, a number of organisations in the other data sets maintained dual registration as NPOs registered with NPO Directorate (this applies to the majority of Section 21 companies, all trusts and a substantial proportion of cooperatives). This means that the different data sets are not mutually exclusive, though for purposes of comparison we refer to them as distinct types of organisations. A separate analysis was furthermore conducted on the primary dataset with the *dual registered organisations removed*, therefore representing only Voluntary Associations registered as NPOs with DSD.

It should be noted that although it might be interesting to examine separately organisations registered only with one regulatory authority, to attempt to create 'pure' types of organisations by excluding from the analysis all those registered with more than one authority is problematic. It would make the samples collected for the study unrepresentative of their populations (in which dual registration is common), and thus prevent us from reaching valid conclusions regarding the organisations included in each database.

Altogether 796 organisations participated in the telesurvey, though the analysis was conducted on each of the five groups separately. Because the samples were drawn from different databases, representing different populations, we could not merge them into one big data set. Instead, the largest data set (that of NPOs registered with the Department of Social Development) as the primary set for the analysis, and supplemented it with the smaller data sets for purposes of comparison and contextualisation.

In all instances, sample groups were slightly increased from what was originally planned in order to make allowance for unusable interviews.





(i) NPOs registered with the Department of Social Development (full data set)

A sample of 535 organisations registered on the Department of Social Development's database was randomly selected, of which 525 completed interviews were eventually usable. The database utilised for this purpose was current up to the end of November 2003¹. The DSD database was categorised provincially, and a population percentage was calculated. A ratio per province was then calculated to establish the sample size for this category of NPO. The sample from each province was then selected according to the systematic random sampling method. A systematic random sample is obtained by selecting one unit on a random basis and choosing additional units at evenly spaced intervals until the desired number of units is obtained. The sample interval is calculated by dividing the population size by the required sample size.

The margin of error for the sample was 4.23% at the 95% confidence interval.

Table One provides an illustration of the provincial ratios and number of interviews conducted in the DSD NPO Telesurvey.

Table 1: DSD NPO Database Telesurvey Ratios

Province	% of Total Population	Interviews Completed
E. Cape	9.1%	48
F.State	7.2%	8
Gauteng	34.5%	181
KZN	17%	89
Limpopo	7.6%	40
Mpumalanga	6.1%	32
N. Cape	2.7%	14
N. West	3.5%	19
W. Cape	12.2%	64
	100.0%	525

(ii) Voluntary Associations Registered with the Department of Social Development as NPOs only (reduced data set of 500)

As mentioned before, the primary data set of 525 interviews included a small number of organisations that maintain dual registration with more than one regulatory body. These organisations may also be registered as Section 21 companies (11 organisations on this database representing 2.1% of the entire dataset), Trusts (8 organisations representing 1.5% of the entire dataset), and Cooperatives (6 organisations representing 1.1% of the entire dataset of 525). These dual registered organisations totalled 25 in number (4.7% of the entire data set). These dual registered organisations were removed from the data set reducing it to 500. A separate analysis was conducted on this reduced data set in order to isolate Voluntary Associations registered with DSD. These figures are reflected as a separate category on most of the tables and graphs that are to follow.

¹This represented a total of approximately 22 500, there were 23 302 organisations registered at the end of March 2004





Table 2: VOLUNTARY ASSOCIATIONS registered with DSD as NPOs only

Province	% of total population	Interviews completed
E.Cape	9.6%	48
F. State	7.4%	37
Gauteng	34.4%	172
Limpopo	7.6%	38
KZN	16.8%	84
Mpumalanga	6.4%	32
N. West	3.6%	18
N. Cape	2.4%	12
W. Cape	11.8%	59
	100%	500

(iii) Organisations Registered with the Department of Trade and Industry as Section 21 Companies

A total of 54 Section 21 company interviews were completed out of an initial sample of 55. The Section 21 companies were accessed off a database obtained from the Department of Trade and Industry (DTI), representing a population of 11 516 at the end of November 2003. As with the DSD database, this population was categorised provincially and sampled according to the systematic random sampling method as explained above. A limitation of this database was that telephone numbers of registered organisations were not captured, making it difficult and time consuming for fieldworkers to look up these contact numbers.

The margin of error for the sample was 13.5% at the 95% confidence interval. This figure is too high to allow us to draw statistically significant conclusions from the sample. In this sense the sample gives us an indication of trends applicable for this particular group of organisations, rather than conclusive representative data.

Table Three provides an illustration of the provincial ratios and number of interviews conducted in the DTI Section 21 Company Telesurvey.

Table 3: DTI Section 21 Sample Distribution

Province	% of Total Population	Interviews completed
E. Cape	3.7	2
F.State	1.9	1
Gauteng	57.4	31
KZN	9.3	5
Limpopo	3.7	2
Mpumalanga	3.7	2
N. Cape	1.9	1
N. West	3.7	2
W. Cape	14.8	8
Total	100	54





(iv) Non-profit Trusts registered with the Department of Justice

Fifty-one interviews with non-profit Trusts across South Africa were completed for the Telesurvey out of an initial sample of 55.

A limitation in this sample group relates to the lack of a database of Trusts at the Department of Justice. Trusts are registered in one of six districts Master of the Court offices: Bloemfontein, Pretoria, Cape Town, Grahamstown, Durban and Pietermaritzburg. There is no central record of registered Trusts, and there are no district specific databases available. It is impossible to ascertain from these records whether a registered Trust is still active, or whether a Trust is a non-profit organisation.

It was furthermore difficult to get total numbers of Trusts registered with each district office, as these records date back to 1934. There are approximately 20 000 - 30 000 total registered Trusts per district (i.e. approximately 120 000 - 180 000 nationally). The Johns Hopkins study² estimates the number of Non-profit Trusts at 3 891.

To overcome these difficulties, a database of Non-profit Trusts that are registered with DSD was accessed. This database numbered a total of 735 Trusts, and it was this population number that was used to calculate the relative provincial amounts, in the same way as the organisations registered with DSD as NPOs and the Section 21 sample. Sampling was done according to the systematic random sampling method discussed above. All Trusts interviewed in this sample were registered as NPOs with the DSD.

The margin of error for the sample was 13.3% at the 95% confidence interval. This figure is too high to allow us to draw statistically significant conclusions from the sample. In this sense the sample gives us an indication of trends applicable for this particular group of organisations, rather than conclusive representative data.

Table Four provides an illustration of the provincial ratios and number of interviews conducted in the NPO Trust Telesurvey

Table 4: NPO Trust Telesurvey

Province	% of Total Population	Interviews Needed
E. Cape	11.8	6
F.State	29.4	15
Gauteng	3.9	2
KZN	21.6	11
Limpopo	2	1
Mpumalanga	2	1
N. Cape	2	1
N. West	2	1
W. Cape	25.5	13
Total	100	51

² Swilling and Russell, *The Size and Scope of the Non-profit Sector in South Africa*, 2002. Different figures are provided in another survey undertaken around the same time, conducted by the Institute for Democracy in South Africa and the Co-operative for Research and Education for a report on *The state of Civil Society in South Africa*, but their findings apply only to the better organised and networked sector of civil society, and is not valid with regard to community-based organisations and other less formal organisations.





(v) Voluntary Associations with no formal registration

A total of 51 interviews with unregistered Voluntary Associations were completed. Because this sample was made up of organisations not registered with any formal regulatory body and therefore not available on any database, a snowball (chain referral) sampling method was used. Well-established networks were asked to share their databases for the purpose of this study. Organisations that participated in this exercise included the Non-profit Consortium, Charities Aid Foundation (CAF), AIDS Consortium, Rural Support Services, Connections and the KwaZulu Natal CBO Network, and the Department of Housings People's Housing Project, amongst others.

Because of the peculiarities of this sample, it is impossible to calculate a true population size (the Johns Hopkins Study estimates the number of voluntary associations to be approximately 54 000). The data set generated for this particular group is therefore not meant to be representative of the entire population of unregistered Voluntary Associations. Its purpose rather is to contextualise perceptions around registration as an NPO, especially in comparison with the larger data set of registered Voluntary Associations. Unregistered organisations are the ones most likely to want to register with DSD as NPOs in the near future and can therefore offer a unique perspective on what the perceived benefit of NPO registration could be.

Table Five provides an illustration of the provincial ratios and number of interviews conducted in the NPO Unregistered Voluntary Association Survey.

Table 5: Unregistered Voluntary Association Telesurvey

Province	Percentage	Number
E. Cape	5.9	3
Free State	5.9	3
Gauteng	31.4	16
Limpopo	7.8	4
KZN	29.4	15
N. West	9.8	5
W. Cape	9.8	5
Total	100	51

(vi) Cooperatives registered with the Department of Agriculture

Because the inclusion of this sample is contested⁴, this sample was enlarged to 100 cooperatives, from the originally envisaged 50. The rationale for this was that it would be interesting to examine the overlap between NPO and cooperative registration, and the relations between organisational forms and perceived benefits of the NPO Act (see also the NPO-Cooperative dual registration Case Study) One of the first questions in this questionnaire asked whether the cooperative considered itself to be a non-profit organisation. A total of 98 Cooperative interviews were completed, of which 65 organisations (66% of the sample) considered themselves to be Non-profit Organisations. Of this 65, 27 Cooperatives (42%) were registered as NPOs with DSD.

Because the Department of Agriculture (DoA) could not supply a database in electronic form, it was decided to use the National Cooperative Association's (NCASA) database, which is compiled using registrations with the DoA. (i.e. there is an agreement whereby the DoA supplies the details of Cooperatives that register with them to NCASA⁵ since 2002, who then provides support services to these organisations).

⁴While the legal definition of a cooperative does not allow for such an organisation to be termed a non-profit, this study identified that a significant number of cooperatives do in fact define themselves as Non-profit Organisations. Other studies on the sector seem to include this group (see Swilling and Russell 2002) as well. It was therefore decided to include this group into the NPO Act Impact Assessment Study.

⁵Personal Communication October 2004: Lucia Ngobeni, Administrator, National Cooperative Association (works with their database).





This database numbered a total of 2000 cooperatives, and it was this population number that was used to calculate the relative provincial amounts, in the same way as the Organisations registered as NPOs, Section 21 and Trust sample.

The Margin of error for the sample is 9.8% at the 95% confidence interval. This makes it easier for us to draw conclusions with regard to the cooperative population as a whole compared to the sample of Trusts and Section 21 companies.

Table six provides an illustration of the provincial ratios and number of interviews conducted in the NPO Cooperative Telesurvey

Table 6: Cooperative Telesurvey

Province	% of Total Population	Interviews Needed
E. Cape	41	40
F.State	1	1
Gauteng	14	14
KZN	26	25
Limpopo	2	2
Mpumalanga	6	6
N. Cape	0	0
N. West	5	5
W. Cape	56	5
Total	100	98

2.2.3 Stakeholder In-Depth Interviews and Focus Groups

Interviews were conducted to elicit in-depth responses to key issues that concern different types of NPO's and the NPO sector as a whole. The Department of Social Development's NPO Directorate was a key focus area that was explored with reference to the implementation of the NPO Act.

Every attempt was made to include both urban and rural NPO's as well as a broad range of interest groups who have played a significant role in influencing the NPO Sector in South Africa into the interview and focus group discussions. Both local and international donors were included into the in-depth interview sample, in order to gather information regarding the opinions of donors in South Africa with regards to the NPO Act and the impact this piece of legislation has made on the NPO Sector.

The range of in-depth interviews and focus groups included:

- Department of Social Development
- Regulatory Agencies
- Government Departments
- Donors
- Civil Society
- Specialists

A list of stakeholders that were interviewed is attached to this report as Appendix 2.

2.2.4 Case Studies

Case studies were included into the research design as a means of exploring issues that arose during





the course of the study. These included:

- Cooperatives that are also registered as NPOs
- NPOs registered previously under the Fundraising Act, 1978
- NPOs de-registered from the NPO Directorate database
- NPOs registered with more than one of the regulatory bodies i.e. DSD, DTI and Department of Justice
- NPOs that have been dissolved

2.3 Research Instruments

All survey research instruments were developed after extensive assessment of existing research. Pilot studies of the research instruments were undertaken to ensure reliability. Numerous amendments were made based upon the outcomes of the pilots, with a few further amendments being made during the course of the survey. Added to this the research tools were circulated to the Reference Group Team who made various suggestions for amendments.

2.4 Implementation

The Telesurvey was conducted with a team of 8 field workers. Field workers were selected on a stringent basis. All field workers were senior post-graduate students of the Development Studies Department at Rand Afrikaans University, and had a good grasp of the nature of the NPO sector. All field workers were involved in a study on NPO's in 2003 where extensive training was given in interview skills as well as an introduction into non-profit sector key issues.

For the purposes of the current study, field workers were inducted according to a rigorous training session, where the aims and methodology of the study were addressed in detail. A full-day training session was carried out with all field workers. This provided an opportunity to engage the field workers with the research subject and purpose of the project. The training day also allowed skills transfer between Umhlaba staff members and the field workers where research methodological issues were explained. The research instruments were role-played in front of students as well as students carrying out mock interviews with each other. It was also important to cover as many of the official languages as was possible within the survey team, as many different organizations in all of the nine provinces were contacted.

Field workers were monitored closely and attended regular de-briefing sessions to assess the progress of the Telesurvey as well as to collectively solve any problems they were experiencing. At the end of the Telesurvey, an in-depth de-briefing session with field workers was held to gather qualitative / anecdotal information that the field workers may have gathered through the course of conducting the telephone interviews. This also provided an opportunity to allow the field workers to pass on their observations and insights into the research study that they may have arrived at during the course of the telephone interviews.

The field workers that undertook in-depth interviews and focus groups discussions were senior researchers with extensive experience in research, as well as with a sound understanding of the NPO sector.

It was anticipated that there would be a high demand for information from organizations that were contacted, and the field workers collated a reference information pack for use. This information pack was updated continuously as new information is requested from the field workers.

2.5 Limitations

A limitations encountered in this study relates specifically to the databases which often contained incorrect, flawed or inconsistent information. This resulted in significant delays, as field workers had to





verify and update information. New sample sets had to be produced in order to reach the required numbers for each target group that was being investigated in this study.

Another problem that has already been mentioned in this report relates to the lack of information available on registered Trusts. This resulted in significant delays in conducting this aspect of the study. As a result a sample had to be constructed from disparate sets of available data.

A general limitation of this assessment relates to issues of representivity and validity. These are issues that most (if not all) studies of a social scientific nature have to grapple with, and this particular study is no exception. It should be remembered that the subject of this study is an incredibly diverse and complex sector, which does not lend itself easily to interpretation. Although this assessment was at least as extensive (indeed, if not more so) in its scope as any other previous study of the NPO sector, there will always be debate as to whether the findings reflect the entire spectrum of views existing in the sector. Such debate is necessary and desirable. Despite these concerns, the authors of this report are of the opinion that this report is an accurate portrayal of the data collected for the purposes of this study.

2.6 Structure of the Report

For the purposes of this study the impact of the NPO Act, 1997 on the NPO sector in South Africa has been assessed according to five key themes. These include:

- Theme One:* Creating an Enabling Environment
- Theme Two:* Establishing an administrative and regulatory framework within which NPOs can conduct their affairs
- Theme Three:* Encouraging NPOs to maintain standards of governance, transparency and accountability, and to improve those standards
- Theme Four:* Creating an environment within which the public may have access to information concerning registered organisations
- Theme Five:* Promoting a spirit of co-operation and shared responsibility within government, donors and other interested persons

Specific indicators have been developed for each theme, to serve as focal points for the purpose of the assessment. These indicators have been identified in each section, and serve to structure the report.

The report provides a contextual analysis based on a literature assessment, before proceeding to analyse each theme in turn. A set of summary concluding remarks is presented, before presenting recommendations emerging from the assessment. The following section covers existing research on and analysis of the NPO sector, seeking to outline the main issues that have come up in public debates over the size, scope and role of the sector. It aims to assess critically some of these issues and outline some of the main studies of the sector rather than discuss every single one of them. As such, the section focuses on those issues deemed to offer a crucial historical and contextual perspective for the assessment of the impact made by the NPO Act on the sector as a whole.





3. ASSESSMENT OF LITERATURE ON NPOS

3.1 Introduction

The impact of government legislation on non-profit organisations (NPOs), and particularly on non-governmental organisations (NGOs) and community-based organisations⁶ (CBOs), should be examined within the wider context of civil society in South Africa. Frequently referred to also as the voluntary sector and the non-profit sector, these terms cover similar terrain, though the scope and boundaries of each term are somewhat different. At the core of all of them are thousands of associations, movements and networks, which play an important role in community organisation, service provision, and policy and advocacy activities. These organisations exist and operate independently of the state, though sometimes in alliance with some of its structures.

Our object of investigation here, the Non-profit Organisations Act of 1997, goes back to 1992, when a Johannesburg-based NGO, the Development Resources Centre, initiated the Independent Study towards an Enabling Environment for Non-Governmental Organisations in South Africa⁷. The project, led by prominent people from the non-profit and business sectors, undertook research and networking around several policy areas affecting non-profit organisations in South Africa, and in particular on:

- Civil society and fundamental freedoms
- Fundraising, giving and volunteering
- Registration and establishment, and
- The tax status of NGOs.

Using findings from local and comparative work, the study came up with recommendations for policy and legislation. These were disseminated throughout the non-profit sector to inform organisations about the study and to ask for their input. This consultation process was a major factor in the eventual formation of the South African National NGO Coalition (SANGOCO) in 1995.

With the consolidation of recommendations from provincial workshops, a legal team drafted a *Discussion Document towards a Non-profit Organisations Bill*⁸. Some clauses in the proposed Bill were controversial and led to a prolonged debate in the sector about the desirable relations between NPOs and the state. While the non-profit sector was sorting out this debate, the new government that took office in 1994 was re-thinking its policies regarding welfare provision, to bring them in line with the vision and values of the RDP. This facilitated a working relationship between the sector and the Department of Welfare, strengthened by the new focus on developmental social welfare and the move of the Fundraising Directorate from the Treasury to Welfare (re-named later as Social Development).

A partnership between the Department and its Directorate of NGOs, and key organisations in the NPO sector, such as DRC and SANGOCO, was formed in 1996. It led to a series of consultations on the proposed Bill, which culminated at the first NGO Week that year. From then on, the Department of Welfare became the leading player in pursuing new legislation. A draft Non-profit Organisations Bill was prepared, addressing many of the initial concerns raised by organisations in the sector since the early 1990s. The principle of voluntary registration of NPOs was re-asserted, and became the foundation of the NPO Bill, and subsequently the NPO Act of 1997.

⁶ Different definitions of CBOs are used in literature on the NPO sector. For the purposes of this assessment a CBO is referred to as an organisation which brings together constituencies at a grassroots level to take action and make representation on issues of common interest. This definition therefore relates more to *locality and target group* than to the size or structure of the organisation.

⁷ Development Resources Centre. 1992. *Independent study into an Enabling Environment for NGOs A participatory experience in public policy formulation*. Johannesburg.

⁸ *Independent study into an Enabling Environment for NGOs - Second Draft proposal concerning a Non-profit Organisations Bill*. 1995. Johannesburg.





The goals of the Act were to "encourage and support" non-profit organisations in their "contribution to meeting the diverse needs of the population", by:

- Creating an environment in which non-profit organisations can flourish
- Establishing an administrative and regulatory framework within which non-profit organisations can conduct their affairs
- Encouraging non-profit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards
- Creating an environment within which the public may have access to information concerning registered non-profit organisations, and
- Promoting a spirit of co-operation and shared responsibility within government, donors and amongst other interested persons in their dealings with non-profit organisations.

The Act maintains that, "every organ of state must determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of Non-profit organisations to perform their functions".

A Directorate for Non-profit Organisations (known as the NPO Directorate), is responsible for:

- Facilitating the process for developing and implementing policy
- Determining and implementing programmes, including programmes
 - To support non-profit organisations in their endeavour to register, and
 - To ensure that the standard of governance within non-profit organisations is maintained and improved
- Liaising with other organs of state and interested parties, and
- Facilitating the development and implementation of multi-sectoral and multi-disciplinary programmes.

As is obvious from the above, non-profit organisations (NPOs) are the centre of the Act's goals and processes. But what are NPOs?

3.2 What are NPOs?

In 1993 the Development Resources Centre defined NGOs as "self-governing, voluntary, non-profit distributing organisations operating, not for commercial purposes but in the public interest, for the promotion of social welfare and development, religion, charity, education and research". This definition limits its scope to organisations working in the public interest, excluding those that have a more private function or that have no clear social-public agenda. It thus excludes a large number of community-based organisations and activities, and therefore may be too restrictive for our purposes here.

The focus on the developmental role of civil society organisations has been widespread. A survey of the voluntary sector as it was in 1996, identified NGOs and CBOs as having an important role to play in filling the gaps left by the government, especially in poor communities. This role, it was argued, was earned "through the strategic location of NGOs, their access to communities and the credibility they enjoy from these communities. Further, their organisational flexibility and capacity to identify development alternatives make them the missing link in many of the state's development ventures." But for them to be able to fulfil this role, "effectively requires a policy and an institutional environment that promote and foster the NGO and CBO sector."⁹

In a more encompassing manner than before, the Non-profit Organisations Act of 1997 defines its

⁹ Jacqui Boule, "Putting the Voluntary Sector Back on the Map", *Development Update*, 1,1 (1997).





scope to encompass trusts, companies and other associations that are "established for a public purpose" and that "the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered" - in other words, they are not aimed at making a profit. Beyond this definition, the Act does not provide further specification of what these organisations might do, in which sectors they may operate, and what specific goals they may pursue, except that they must not be organs of state. The data collected by the NPO Directorate of the Department of Social Development merely uses the objective and theme of registered organisations in order to classify them into different categories.

Building on this definition, the Taxation Laws Amendment Act of 2000 exempts under certain conditions organisations engaged in 'public benefit activities' from paying taxes. In terms of the legislation, Public benefit organisations (PBOs) may become exempt from income tax, if they apply for exemption, giving full details of their activities with supporting documentation, and meeting certain criteria related to the way they generate and spend funds. The bulk of their activities (measured in cost or time) must be carried out for the benefit of persons in South Africa, in a non-profit manner and with altruistic or philanthropic intent.

The main categories of such activities are: welfare and humanitarian; health care; land and housing; education and development; religion, belief or philosophy; cultural; conservation, environment and animal welfare; research and consumer rights; sport; and providing resources for approved PBOs.

A comprehensive study of South Africa's non-profit sector - published in 2002 as part of the Johns Hopkins comparative international non-profit sector study¹⁰ - adopts a broad structural approach that uses five operational criteria to define its scope. Non-profit organisations must be:

- Organised (have institutional form)
- Private (but may receive funds from government)
- Self-governing (control their own activities)
- Operate not for profit (profits must be reinvested in the mission of the organisation), and be
- Voluntary (must engage volunteers and have non-compulsory contributions and membership).

To the organisations included in public interest/benefit definitions presented above, the Johns Hopkins study adds associations that have no clear public agenda but which may play a role in the provision of community based informal social services. These may include cooperatives (small scale operations based on self help principles), stokvels (a group who contribute money to a pool, from which each member benefits in turn), burial societies (groups to which members contribute to assist with burial costs), religious organisations (which play a role in welfare, cultural, educational, and recreational life of communities), and local and community-oriented branches of political parties.

A further study undertaken in 2001, in the framework of the Civicus civil society diamond study¹¹, defined its object of investigation "the sphere of organisations and/or associations of organisations located between the family, the state, the government of the day, and the prevailing economic system, in which people with common interests associate voluntarily. Amongst these organisations, they may have common, competing, or conflicting values and interests."

When NGO members in that study were asked to identify characteristics associated with South African civil society, they included, among others, being non-profit (operating not for private gain), having a measure of voluntarism (using voluntary workers), having delivery orientation, being independent (or autonomous of government) and having their own constitution, rules, and governance structures.

¹⁰ *The Size and Scope of the Non-profit Sector in South Africa*, School for Public and Development Management, University of the Witwatersrand, 2002.

¹¹ *Two Commas and a Full Stop (aka the Civicus Diamond Study)*, Cooperative on Research and Education (CORE), 2001. The study relied primarily on workshops at which participants from NGOs and CBOs reflected on their own experience as civil society activists.





Some participants in the study felt that civil society organisations represented the disadvantaged and the poor on the margins of society, but others felt that they operated on a mandate from members or beneficiaries (regardless of social origins), and were driven by the interests of their communities. They were established mostly in order to respond to the needs of people and communities in the areas of welfare, service provision, training and technical assistance, community-based burial and savings groups, income generation, community development, advocacy and networking.

At this point, it is important to note that the NPO Act adopted a comprehensive definition of its domain. This has implications for our understanding of its goals and the extent to which they have been met, as will be explored later on in this report.

Before plunging into a discussion of the concrete relations between state and NPOs (or civil society organisations), we offer here an overview of the context for the NPO Act, drawing on a range of studies that examine various aspects of civil society in post-apartheid South Africa.

This will include interpretations of notions such as an enabling environment for the non-profit sector and partnerships between its organisations, government structures and international agencies, seen from the perspective of the players in the field. Another issue covered in this review is work regarding the self-organisation of the sector as well as government legislation in relation to it. Local and international donor perspectives on their role regarding the sector, and their views on the NPO Act and its impact will be surveyed as well. We conclude with an outline of the key issues that emerge from the literature survey, the issues that remain uncovered, and where our current study can make a contribution to filling the existing gaps. But first, a brief theoretical interlude, which can be skipped by those with a more applied mind!

3.3 Civil society: A theoretical interlude

When we look at the non-profit sector we need to understand the complex and contradictory roles of social and political players in a society undergoing transformation. These have been shaped in South Africa by the particular circumstances of apartheid, the struggle against its socio-economic policies, developments following the political transition of 1994, and the nature of state and civil society that emerged out of these processes. The historical background is thus important in understanding the challenges and opportunities facing us today.

A starting point would be a general definition of civil society, which regards it as "a sphere of social interaction between economy and state, composed above all of the intimate sphere (especially the family), the sphere of associations (especially voluntary associations), social movements, and forms of public communication".¹² The political role of civil society is related to "the generation of influence through the life of democratic associations and unconstrained discussion in the cultural public sphere".

From this perspective civil society can contribute to policy through the implementation of programmes to supplement (but not replace) the role of the state, and through forms of regulation to counter-balance the ability of the private sector to subordinate the economy to its interests.

A prominent theorist in the field, John Keane, distinguishes between three main approaches to the study of civil society:

- An *analytical* approach, which aims to "develop an explanatory understanding of a complex socio-political reality by means of theoretical distinctions, empirical research and informed judgements

¹² Jean Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge: MIT Press, 1992).





about its origins, patterns of development and (unintended) consequences."¹³

- A *strategic* approach aimed at "defining what must or must not be done so as to reach a given political goal". This may include fighting despotic power by creating a network of oppositional civic organisations (as was the case in some South American countries and in South Africa), and identifying the steps that enable political mobilisation to fight the existing power structure.
- A *normative* approach, which emphasises "the multiplicity of often incommensurable normative codes and forms of contemporary social life". It places value on political and cultural pluralism in order to create space and provide people and groups with freedom to debate each other. Civil society, in this approach, is a way of subjecting power to mechanisms that enable disputation, accountability, representation and participation.

A similar scheme is found in the work of Charles Taylor, who argues that civil society is a sphere of free associations independent of state power. In a stronger sense, civil society is an ensemble of associations that interact with the state and can significantly determine or deflect the course of its policy.¹⁴ Taylor focuses on the latter sense, which can be differentiated by the extent to which civil society is seen to be complementing state power or providing an alternative to it (stronger sense).

The relationship between these different conceptualisations of civil society, and their implications with regard to the role of civil society organisations in service delivery, advocacy and community life, have been a topic of contention in South African, during the apartheid era and in its aftermath.

3.4 Civil society and the state: Historical context

The relations between state and civil society were not a major issue in the struggle for democracy in South Africa. During the apartheid era, opposition forces did not challenge the prominence of the state as such, but rather the specific uses to which state power was put. Civil society consisted of organisations and structures that positioned themselves outside of the state, due to its inherently undemocratic character, but acted to change the distribution of power in society. It was the policies and priorities of state structures that were a primary source of concern, not their existence and powers in relation to society. In Eastern Europe, in contrast, challenging the prominent role of the state in economic, social and cultural life was a major issue in the struggle for democracy.

Tensions were thus inevitable between opposition forces - primarily those affiliated with the African National Congress - that were oriented primarily towards the seizure of power, and for whom a base in civil society was a temporary tactical position, and forces - NGOs and CBOs - rooted in civil society. These tensions were largely suppressed during the 1980s, to allow a united front against the common enemy, but they started rising to the surface with the demise of apartheid and the beginning of the transition process in the 1990s.

To appreciate how state and civil society relations unfolded in South Africa we need to keep in mind that the nation-state, which until the 1980s wielded ultimate political authority, must not be studied in isolation from its regional and international environment. Tighter integration of markets and of global social and political relations has affected the capacity of each state to be the absolute master of its own domain. It is impossible to understand specific South African developments outside of their context: the decline of the welfare state in the West, the collapse of socialism in the East, and the disillusionment with the state-oriented development paradigm in the South. In addition, the prominence of free trade and export-oriented policies, multiculturalism, the expansion of media such

¹³ John Keane, *Civil Society: Old Images, New Visions*, Polity Press (Cambridge, 1998), p. 37.

¹⁴ Charles Taylor, "Invoking Civil Society", in *Philosophical Arguments* (Harvard University Press, 1995), pp. 204-24.





as the Internet, and the blurring of boundaries between the local and the global, all impact on specific state-civil society interactions.

Historically in South Africa, the length, intensity and impact of colonial interventions severely undermined indigenous structures and social networks. Since the 1970s, a new set of social and political institutions, rooted in contemporary developments and only loosely connected to pre-existing networks, have come into being. They have confronted a state that was strong and reached deep into civil society and the market, though its capacity to maintain order eroded over time.

The main political opposition movement, the United Democratic Front (UDF), provided an organisational framework for hundreds of NGOs, CBOs, youth, women, and student organisations, neighbourhood and township associations, religious organisations and unions, all of which were part of civil society. Although the main goal of the movement was to bring down the apartheid regime, many other concerns were raised by affiliate organisations. A range of issues including working conditions, rent, environmental degradation, urban services, AIDS awareness, school curriculum, and many others, were taken up. Specific local conditions and grievances, and issues of sheer survival in many localities throughout the country, fed into a strategy of political mobilisation.

In the absence of legitimate elected structures, civics stepped in to provide some basic services, such as provision of land in informal settlements, policing, and settling disputes through people's courts. Various NGOs attempted to provide services in areas such as literacy, health care, human rights, and welfare, but with little prospect of meeting the huge needs of the population.

This took place against a background of processes that unfolded in the late 1980s and early 1990s, which involved shedding off state functions to the private sector and communities in many areas, ranging from education to security. This was part of a global trend towards state disengagement from society (the so-called Thatcherite revolution). In South Africa it was additionally motivated by a desire to replace politically illegitimate control mechanisms by cheaper, more efficient, and legitimate market mechanisms, which would decrease the need for extra-economic coercion to secure white privilege. The steps taken in this direction were also prompted by fear that with transition, a strong state would use its power to radically shift the distribution of resources.

With the political transition of 1994, there were expectations that the diminishing role of the state would be reversed, and that the new government would take on further tasks and commitments. While the new government has committed itself to a range of new programmes and policies, in practice is faced serious problems in extending its reach. Budgetary constraints, the legacy of inefficient state management, and the realisation in state circles that their capacity to intervene in society is limited, have prevented the state from broadening its reach. At the same time, power hunger, the impact of the 1980s rhetoric, and pressure on government by the labour movement to keep market trends at bay, have encouraged some state structures to attempt greater involvement in economy and society. These contradictory dynamics will continue to be displayed in coming years.

It is useful to consider here that transition in South Africa has unfolded in a global environment different from the 1960s and 1970s, which saw a wave of liberation movements carried to power in Asia, Africa, and Latin America. Deeply influenced by state-oriented development paradigms, many of these movements sought to create strong centralised institutions in order to direct socio-economic development, and to nationalise private enterprises. Markets and civil society institutions were marginalised as a result. In southern Africa, countries such as Tanzania, Zambia, Mozambique, and Angola epitomised this approach.

By the late 1980s, when the prospect of political transition in South Africa became realistic, the environment had changed. The economic situation in most countries that followed the state-oriented





paradigm was deteriorating. State-directed development had led to the creation of bloated bureaucracies, inefficient management, loss of productivity, corruption, deterioration of services, the rise of new elites feeding off the public trough, and widespread public discontent. The notion of a strong state as the key to development had been discredited. The breakdown of the welfare state in many countries in the West, due to its inability to deliver social services as it used to (referred to as 'the fiscal crisis of the state'), further contributed to disillusionment with the role of the state.

Caught between the supremacy of the market and the state, elements in civil society have had to carve a new niche for themselves. They have been assisted in this task by the growing international concern with the failure of established development paradigms, and the need to come up with creative alternatives to the conceptual dichotomies that have dominated the field for decades. Civil society has been celebrated as the answer to the inequalities generated by the market on the one hand, and the bureaucratic ossification generated by the state on the other. The extent to which this can become a valid answer is explored in the next section.

3.5 Post-Apartheid South Africa: civil society, state, and democracy

It is important to bear in mind that civil society is composed of many diverse elements, and is divided between supporters of different and opposed social and political agendas. In countries such as the United States and South Africa, where state-sponsored racism was abolished but racist institutions and practices are prevalent in the private sphere, a simplistic identification of civil society with the realm of freedom, and of the state with the realm of coercion is untenable. In other words, we cannot look up to civil society as a magic solution to all social problems. Rather we must examine it critically, and evaluate the ways in which elements within it can act (possibly together with elements from other sectors) to advance worthwhile causes.

The relations between the state and civil society are in particular need of clarification in South Africa, due to the equation of democracy with majority rule in this country. The exclusion of the majority of the population from having a say in the way the country was governed, made the demand for a political system based on the principle of 'one person, one vote' central to the anti-apartheid struggle. Slogans such as 'power to the people' or 'the people shall govern' were used interchangeably with this demand. In essence they called for the creation of a system in which all citizens would have access to the vote and thus to power.

Much of the concern with transformation of the state in the post-1994 period has focused on the need to change policy frameworks and the racial complexion of the public service. Little attention has been paid to the need to transform the ways in which state power is conceptualised and exercised, and the ways in which it interacts with society. The ANC and its alliance partners share an emphasis on the state as the guiding force of economy and society. They frequently mention the need to involve popular forces in the process of governance, and invoke the notion of partnerships with civil society and the private sector. Popular participation is invariably seen, however, as a way of bolstering the role of the state under ANC leadership, rather than as potentially contradicting, challenging or forcing it to re-think its policies and practices.

The frequent calls to allocate more powers and control over budgets to central government, nationally and at the metropolitan level, at the expense of provinces and local tiers of government, are related to this approach. State officials and political leaders seem to operate on the assumption that bigger is always better, that formal deserves more attention than informal, and that management on a large scale implies the ability to shift resources and priorities to benefit poor constituencies. From broadcasting and telecommunications to education and urban planning, centralised control is adhered to in principle, though practices vary a great deal, depending on resources and capacity.





The concern with the need to redistribute resources and allow planning to address the legacies of the apartheid past is understandable and justified, but centralisation gives rise to problems. It tends to shift power upwards, away from people and structures closer to the ground. It empowers an expanding non-elected and unaccountable bureaucracy, which is needed to administer affairs and transmit policies from the upper echelons of power to lower levels of implementation. It makes the incorporation of local inputs, which of necessity are diffuse, unsystematic and location-specific, difficult. It creates filters through which the concerns expressed by the grassroots become diluted. It encourages large-scale policy frameworks removed from practical constraints of implementation at the local level, and therefore can make even the best policy intentions unrealisable.

3.6 Towards an enabling environment

A view from the NGO sector early in the transition reflected on the good and bad news involved in the re-alignment of political forces in post-apartheid South Africa.¹⁵ On the positive side:

- The South African Constitution, which guarantees many rights that create an enabling environment within which NGOs and CBOs can operate. These include the rights to equality, freedom of association, freedom of speech, freedom of assembly and access to information
- Legislative steps made provision for the voluntary registration of the non-profit sector, a new form of incorporation, and a register of non-profit organisations, these steps were the outcome of active lobbying by the NGO sector (culminating later on in the NPO Act)
- The creation of the National Development Agency (NDA), with the aim of coordinating and distributing government and other funding to NGOs and CBOs according to need
- Setting up many forums and development councils at local level, which create space for active civil society and community involvement in development.

The gaps and challenges that needed to be addressed were identified as follows:

- The need for a reform of the tax laws to facilitate the activities of the sector and encourage contributions to it from the private sector
- Creating a space for participation of NGOs and CBOs in local level development
- Tender procedures need to be revised to include criteria that recognise the value contributed by NGOs and CBOs - their legitimacy, flexibility and participatory approach
- Information exchange, including information about new legislation, policies, projects and tenders for government work, and information on NGOs' capacities and programmes.

The gaps and challenges identified by the NGO sector in the mid-1990s formed the basis for a series of discussions and attempts to formulate policy principles regarding the sector and the environment within which it operates. As mentioned earlier, the NGO Week of December 1996 discussed tasks related to the establishment of an enabling environment for the sector. These included getting rid of the legal legacy of apartheid, simplifying the laws governing civil society organisations, and creating space for and protecting NGOs that find themselves in conflict with government policy.

Following a workshop with international representatives of NGO coalitions from Africa and elsewhere, four principles were raised to inform the notion of an enabling environment:

- That the legislative framework should promote the independence of civil society, not control it
- That the regulatory framework should allow state intervention only when absolutely necessary
- That the law should promote accountability of NGOs without placing on them undue burdens, and
- That the law should be simple and user-friendly.

¹⁵ Jacqui Boule, "Putting the Voluntary Sector Back on the Map", *Development Update*, 1,1 (1997).





It is clear from that approach that the majority of people in the NPO sector interpreted the concept of an enabling environment back then - and arguably today as well - as giving organisations as much freedom to operate as possible, with minimal state regulation to ensure some accountability to their constituencies. The purpose was to remove the remaining restrictive apartheid regulation (such as the Fundraising Act) rather than give the state new powers to control the sector.

Government seemed to concur with the notion that its intervention should be kept to a minimum, in order to protect and promote the broad reach and sheer variety of functions fulfilled by civil society organisations in South Africa.¹⁶ In the White Paper on Social Welfare it defined an enabling environment as an economic, political, cultural and legal environment that enables people to achieve social development. This document further acknowledges that such an environment is created by a variety of both state and non-state actors that require space within which to conduct their affairs. The NPO Act itself talks about the need to create an environment in which NPOs can flourish.

It has been argued that we need to distinguish between the creation of an enabling environment, on the one hand, and the establishment of an administrative and regulatory framework and encouraging NPOs to maintain standards of governance and accountability on the other. The enabling environment should centre on a legal framework that will regulate the creation of NPOs, allow them to operate independently of the state, and enhance their capacity.¹⁷ From this perspective, helping organisations to register and comply with the provisions of the Act does not constitute capacity building. It would mean that the NPO Directorate merely assists NPOs in overcoming obstacles that it itself created. The ultimate goal must be building capacity to tackle tasks beyond the bureaucratic requirements of the Act, and that involve developing and implementing social policy.

Another formulation of an enabling environment, which focuses on legal space from NPOs, resource mobilisation and ability to make an impact on policy, provides a useful benchmark for measuring the extent to which a given environment is enabling, as outlined below.¹⁸

Table 7: Aspects and conditions of an enabling environment¹⁹

Outcome domain	Legal dimensions/conditions
Generic pre-conditions	Constitutional guarantees of civic right
Association	Judicial system - autonomy and access Freedom of association and assembly Maintenance of public order Public benefit recognition/NPO registration
Resource mobilisation	Public benefit/NPO taxation, exemptions and privileges Labour law and regulations Reporting on financial transactions
Voice	Freedom of expression Right of access to public media Public media control and censorship
Information and communication	Private media ownership, control and censorship Freedom of access to public information Control on citizen movement and residence
Negotiation	Political processes - elections, referendums Participation in public policy making NPO participation in (local) governance system Corporate standards and compliance system

¹⁶ Republic of South Africa. 1997. *White Paper for Social Welfare Principles, guidelines and recommendations, proposed policies and programmes for developmental social welfare in South Africa*. Notice 1108 of 1997. Pretoria: Government Printer.

¹⁷ Ricardo Wyngaard, *Evaluating the Impact of the Non-profit Organisations Act, No. 71 of 1997* (Legal Resources Centre, March 2003)

¹⁸ Alan Fowler, *An Enabling Environment for Civil Society: What does it mean and how does law fit in?* (CCS, 2003).

¹⁹ This matrix is referred to as the ARVIN matrix, as presented in Alan Fowler. 2003. *International Development Frameworks, Policies, Priorities and Implications: A basic guide for NGOs*. Canada: Oxfam.





This matrix identifies the legal dimensions that must obtain for an enabling environment to emerge. Among these are general rights in society (such as rights to association, assembly and freedom of expression), institutional conditions (a constitution, autonomous and accessible judicial system), and specific legislation that recognises non-profit organisations and their public benefit functions, and adjusts the tax and labour legislation accordingly. Political conditions having to do with an open system that includes regular elections, and the ability of citizens to access information and participate in public policy making, at national and local levels, are other essential ingredients.

Research conducted by International Center for Not-for-Profit Law (ICNL), in conjunction with the World Bank culminated in the *Handbook on Good Practices for Laws Relating to Nongovernmental Organisations* of 1997. This publication analysed laws from over 100 countries to examine international standards in practice. The ICNL identifies four aspects of an enabling environment, along lines similar to those proposed by the ARVIN framework used by Fowler.

The first aspect is *protecting fundamental freedoms*. These freedoms include the establishment and registration of NPOs in an easy and affordable manner, assisted by the state when needed. NPOs should be permitted to engage in activities for the benefit of their members and in public benefit activities, have the right to speak freely about all public matters, and have access to all media outlets to disseminate information about their activities.

The second aspect is that of *integrity and good governance*. Laws governing NPOs should require that the rules governing the operation of the organisation be stated in the founding documents of an NPO. The legislation should allow an NPO to set and change the governance structure and operations of the organisation, and provide that officers and board members of an NPO have a duty to exercise loyalty to the organisation and to execute their responsibilities to the organisation with care and diligence. Conflicts of interest and private appropriation of assets must be prevented.

The third aspect is *financial sustainability*. NPOs should be permitted to engage in fundraising activities, nationally and internationally, subject to regulation to ensure standards for public solicitation activities, the provision of information to the public, and sanctions for inappropriate conduct. An NPO should be permitted to engage in commercial activities, provided that its non-profit status is not violated. NPOs should be exempt from taxation on income from members, donors or government agencies. To encourage philanthropy and social giving, donations to public benefit NPOs should be entitled to income tax benefits. The laws should encourage volunteers to work for NPOs, by encouraging employers to permit employees to have time off for such work. The laws should encourage partnership between government and NPOs, providing for government financing of projects carried out by NPOs, through grants and contracts.

The fourth aspect is that of *accountability and transparency*. It includes regular but simple reporting requirements (while protecting confidential information), power of auditing by supervisory agencies and tax authorities, disclosure of information about general finances and operations to the public, and sanctions for violations particular to NPOs.

Both Fowler and the ICNL have come up with legal and regulatory frameworks that allow us to examine existing conditions against a set of ideal-typical circumstances.²⁰

3.7 Major research findings

Since the mid-late 1990s, various research projects have been undertaken to gather information, analyse social and organisational conditions, and suggest ways forward in order to create an enabling environment for the non-profit sector.²¹ They deal with many of the principled aspects discussed above,

²⁰ For attempts to extend aspects of these frameworks to South Africa, see Non-profit Partnership, *Conference on the Enabling Environment: A report* (March 2003).

²¹ Among studies undertaken in the same period, which assert many of the same points above, are *Tango in the Dark: Government and Voluntary Sector Partnerships in the New South Africa* (CASE and Interfund, 1996), and *NGOs and Tendering for Government Contracts* (CASE and Sangoco, 1998).





but with reference to concrete legal and organisational development in South Africa in the last decade. Some of the main reports and projects that address these issues are reviewed below, focusing respectively on the size and scope of the sector, and its role and impact.

3.7.1 The size and scope of the NPO sector

Two major quantitative empirical studies have been undertaken in recent years, and are discussed below. Two points emerge as central from these reports:

- There is a clear divide between the better resourced and organised NPOs (usually referred to as NGOs), and poor community-based organisations, which are largely deprived of resources and are less formally structured
- All formal processes of registration - for tax exemption, as section 21 companies - are likely to benefit more the former (organised NPOs) than the latter (resource-poor CBOs). For the NPO Act to have a positive impact, it must offer concrete benefits, particularly to organisations with limited capacity to engage in formal activities. Otherwise, it would be seen to as a drain on meagre resources with no visible benefits to those who take the trouble to engage with it.

The Johns Hopkins report on the size and scope of the non-profit sector in South Africa focused on organisational employment and revenue figures, drawn from a large sample of organisations based in diverse communities; it is less useful with regard to the nature and impact of the activities undertaken in the sector.

The number of organisations in the sector is approximately 100,000, with more than half of them (53%) classified as informal and voluntary community-based organisations. A large proportion of these are smaller organisations operating only at a community level. The report asserts that these organisations may make important contributions to poverty alleviation, since they can respond to problems at a community level quickly and efficiently. Only about 15% of the total number of organisations can be identified as NGOs (section 21 companies and trusts).

Of the different fields in which non-profit organisations operate, the largest ones are social services (22% of the total), culture and recreation (20%), and development and housing (20%), followed by health (7%), education (6%) and environment (3%). Putting together the sectors involved directly in various social delivery tasks (education, health, social services, environment, and development and housing) gives us 58,000 organisations throughout the country that engage in delivery, out of the total of 100,000 NPOs.

The total income of the non-profit sector in South Africa is estimated at R14 billion, of which government provided 5.8 billion (42%), R500 million of which derived from overseas development assistance, channelled largely but not exclusively through the South African government. Self-generated income derived from fees, sales, and membership dues accounted for 29%, private sector donations (mostly local) accounted for 25% and investment income accounted for the remaining 5%. It is important to realise that government contribution was in the form of grants as well as contracts. The fields benefiting the most from this source were social services (36% of the total government contribution), health (29%), and development and housing (20%), with education and environment receiving little amounts (of the total government contribution, 86% went to the delivery sectors).

3.7.2 Benefit from tax legislation

Subsequently to the Johns Hopkins study, a survey conducted by Umhlaba Development Services in 2003 examined the impact of the 2000 tax legislation on the non-profit sector. This was done with the use of a large representative sample of NPOs registered with the Department of Social Development





(similar in this sense to the bulk of organisations represented in our current study).²²

Most of the organisations in the survey were based in communities (87%), while the rest were provincially based (8.5%) or nationally based (4.5%). The primary constituencies for organisations' work were individuals or families (50% of the total) and communities (48%). Organisations in the survey were equally divided between those who were based primarily in the urban areas (43%) and in the rural areas (42%). Consistently with the findings above, the majority of organisations in the survey - 62% - regarded themselves as community-based organisations (CBO). Only 32% regarded themselves as NGOs, and 4% defined themselves as both NGOs and CBOs.

Importantly for the tax legislation study, as well as for the current study, many organisations said they could not pay salaries on a regular basis, indicating meagre financial resources. Almost a quarter of them (23%) did not pay staff salaries in the two months preceding the survey, and the staff of an additional 37% of organisations consisted of volunteers who did not get paid. Only 39% paid their staff salaries in the preceding two months (54% of NGOs, but only 32% of CBOs).

Whereas 11% of organisations in the survey had no financial resources, 77% of them had revenue of less than R250,000, 8% had revenue of between R250,000 to R1,000,000, and only 4% has revenue exceeding R1,000,000. As the table below makes clear, there are distinct differences in income levels between organisations of various types.

Overall, organisations defining themselves as CBOs and operating at community level, registered only as NPOs with DSD, were more likely to operate with meagre financial resources. NGOs, urban-based organisations, and those based at provincial and national levels are more likely to enjoy relatively high revenues.

This is also true for organisations registered as Section 21 companies, compared to those only registered as NPOs with DSD, and to a limited extent for affiliated organisations to some kind of network or forum, compared to non-affiliated organisations, which are not part of a network.

Table 8: Overall revenue

Type	No income	R0 - R250,000	R250,000 - R1,000,000	More than R1,000,000
CBOs	10%	80%	7%	3%
NGOs	11%	68%	10%	8%
Rural base	17%	75%	6%	2%
Urban base	10%	76%	9%	5%
Community base	12%	79%	7%	3%
Provincial base	4%	69%	17%	10%
National base	8%	52%	18%	22%
Organisations registered as NPOs only	11%	79%	7%	3%
Section 21 companies	9%	64%	14%	12%
Affiliated organisations	10%	75%	10%	5%
Non-affiliated organisations	11%	79%	6%	4%
All	11%	77%	8%	4%

Organisations differed not only by the overall amount of financial resources, but also by revenue sources, as shown below. Other major sources of income mentioned by organisations included fundraising, own pockets, self-generated funds, and school fees.

²² Umhlaba Development Services, *Determining the Net Benefits the NPO Sector has Derived from the 2000 Taxation Laws Amendment Act: Developing a Comprehensive Typology of Registered NPOs in South Africa* (March 2004).





Table 9: Sources of funding as proportion of overall revenue

Source	Less than 20% of revenue	20% to 50% of revenue	More than 50% of revenue
Local funders	94%	3%	3%
Government subsidy	77%	11%	12%
Private donations	71%	13%	16%
Corporate funding	97%	2%	1%
International funding	94%	3%	3%

Overall, organisations were more likely to use private donations and government subsidies as major sources of income, while local, corporate and international donors were less important sources. A strong emphasis on self-funding and fees (especially for educational institutions) was also evident.

3.7.3 Role and impact of the sector

In this section different perspectives reflecting the diversity of views within the NPO sector are presented, followed by a summary of the main points emerging from the discussion. The 2001 Civicus study mentioned above identified two complementary tasks for South African civil society:

- Consolidating an enabling environment for the sector, and
- Responding effectively to the challenge of poverty eradication.

A related question, raised by participants in workshops conducted for the study, was how civil society organisations could engage other forces such as trade unions and business associations, and work towards more effective co-operation with the private sector, donors and government. NGOs agreed that the space available for their operations increased dramatically since 1994, with new enabling legislation and regulations. Yet, they saw a need, particularly among those working in disadvantaged and remote communities, to enhance their capacity to influence government policy and to access support for programme implementation.

To make the notion of partnership meaningful, and to allow organisations to work together with government, grassroots organisations must be able to access information regarding the legislative and regulatory environment and opportunities for collaboration between the state and the non-profit sector. It is the responsibility of individual organisations to keep themselves informed and obtain access to government in order to make well-informed, constructive representations on behalf of their constituencies. However, government must also ensure that its information reaches all those who can benefit from it, and all those who can use it to the benefit of communities, and listen willingly and carefully to the input made by civil society organisations.

In a more self-critical vein, workshop participants recognised that civil society organisations need to enhance their public and financial accountability through discipline, good governance, and transparency. Crucially, they should move away from an entitlement mentality, understanding that '*No one owes us a living!*' In addition, organisations must ensure that their programmes become consistent with the values they promote, by encouraging volunteerism and public participation as means of empowering communities.

Given that the impact of civil society organisations on policy and implementation is not obvious, workshop participants added, these organisations should improve their capacity to measure impact and communicate effectively to others regarding the positive contribution they might make to policy and to the lives of South Africans. They - and government - should develop baseline data, identify appropriate indicators and means of quantifying them, and report on the results widely.





Another report from 2001 by Interfund (a grant-making agency that has regularly monitored the non-profit sector)²³ provides an evaluation of relationships and partnerships between government and the voluntary sector, focusing on tensions in the relationship due to policy disagreements and difficulties involving funding and money distributed through the National Development Agency and the National Lottery.

In the area of service delivery, co-operation with government remained uneven from sector to sector and across the levels of government involved. The urgency of forging effective delivery partnerships between government and the non-profit sector is underscored by the revelation that many government departments have failed to spend millions of Rands destined for the provision of basic services and poverty relief. The main cause of non-delivery was serious capacity constraints.

The Interfund review drew on an earlier study on service delivery partnerships between government and the non-profit sector, produced by for Transitional Development National Trust (TNDT).²⁴ That earlier study identified several obstacles to partnerships between government and NPOs:

Negative attitudes: government officials felt that civil society organisations wanted to deliver services to or for government, at the same that they retained independence to advocate and lobby. Civil society organisations often felt they were unable to assert themselves because power was skewed in favour of government, their work was undervalued, and government did not take them seriously

- *Lack of clarity:* government did not have an overall vision for interaction with civil society organisations. There was a view in government that participation and capacity building by and for civil society organisations was secondary to the need for quick service delivery and spending budgetary allocations. Organisations on the other hand, felt that their contribution to development was largely ignored or misunderstood
- *Institutional capacity constraints:* on all sides problems related to poor institutional capacity were manifested, including lack of skilled staff and of proper financial, management and human resources systems
- *Financial difficulties:* the decision by many international agencies to shift funding from civil society organisations towards government pushed a large number of organisations to turn to government for financial assistance (not always being successful). Many organisations were forced to spend much time on raising funds rather than on development work and service delivery
- *Legal obstacles:* legal obstacles to partnerships between government and civil society included the complex tender system, strict government financial regulations, cumbersome budget approval procedures, and a lack of tax incentives for donors.

On the basis of this identification of problems and a study of successful cases of partnerships, the report made the following recommendations:

- Legal obstacles should be addressed through consultation and negotiation between the two parties (civil society organisations and the state)
- Both parties need to assess what changes they could make to improve partnerships. A paradigm shift in both sectors towards mutual understanding and respect is crucial. Government needs to outline its development objectives and the basis on which it seeks to interact with civil society organisations. It has to simplify bureaucratic procedures and improve communication between departments. Organisations have to strengthen ties with the communities they served, improve networking, and become more professional

²³ "Annual Review: The Voluntary Sector and Development in South Africa, 1999-2000", *Development Update*, 3, 3 (April 2001).

²⁴ B. Bench and B. Lipietz, *Structuring Effective Development-oriented Interactions between the State and Civil Society in South Africa: A Comparative Analysis of Mechanisms in Place*, TNDT, 1998.





- Communication between government and civil society has to be strengthened, through the establishment of dedicated units in line departments to take the lead in sharing information and promoting a dialogue, and the creation of databases on organisational capacities and expertise in order to facilitate contact and interaction
- Contractual interaction needs to be streamlined. The responsibilities and activities of each party should be clarified, and proper management systems and procedures put in place.

As an outcome of this report, and the growing awareness in some government circles of the importance of the issue of partnerships, progress in addressing legal obstacles and moving to more progressive tax policies became evident. Government's tendering and procurement policies and procedures were improved to some extent in 1999/2000, and the National Treasury formulated a new framework for public-private partnerships (PPP). Many of these changes were technical in nature, however, and did not address the crucial issue of the attitudes of government officials towards partnerships with civil society organisations. Government's focus has been on forming partnerships with the business sector, and civil society organisations have been relegated to the role of potential training providers or project implementers, rather than partners in policy formulation and delivery.

A 1999 report by the Centre for Policy Studies argued that many civil society organisations were involved in formulating green and white papers for national and provincial governments, but were involved to a much lesser extent with local government. In the same year, a workshop on relations between government and civil society organisations showed that many among the latter were increasingly frustrated regarding the possibility of engaging with the government policy process.²⁵

These perceptions highlight the need to investigate the nature and specific role of civil society organisations in development. In particular, developmental organisations could enhance their role as agents of change in eradicating poverty and bringing about social justice. This would mean building capacity and mobilising poor and disadvantaged communities to speak for themselves, as well as working independently and with government to formulate development policy and oversee its successful implementation.

The context for such efforts is the visible increase in expenditure on social service delivery over the last few years. Since the state has not assumed an expanded role, this means at least some of this increase was made up by work and contribution on the part of civil society organisations and business. The Johns Hopkins study outlined some contextual elements for this development:

- A state controlled by an ascendant, black middle class in alliance with business interests and the unionised sectors of the working class. The state is interested in meeting socio-economic needs effectively in order to maintain social stability
- A well-organised non-profit sector with considerable capacity to deliver: this includes the large, established health and social service organisations that have positioned themselves to provide services for the urban middle and working classes, as well as smaller, less formal and less capacitated community based organisations that aim to serve the needs of the poor
- A macro-economic model that encourages the state to enhance social development by mobilising financial and human resources in partnership with other sectors (business, donor agencies, NGOs, CBOs, communities)
- An organised corporate sector committed to social responsibility and investment
- An international donor environment, in which many donors prefer again to fund civil society organisations rather than governments as key agents of poverty eradication.

In the Reconstruction and Development Programme (RDP) of 1994 the state formally committed itself

²⁵ Caroline Kihato and Thabo Rapoo, *An Independent Voice? A Survey of Civil Society Organisations in South Africa, Their Funding, and Their Influence over the Policy Process* (CPS, 1999).





to fostering a wide range of institutions of participatory democracy in partnership with civil society. NGOs were seen to be playing a role in capacity building with regard to CBOs and the development process, as well as engaging in service delivery, mobilisation, advocacy, planning, lobbying and financing. This was qualified by the need for NGOs to adopt transparent processes, and operate in a manner that responds to the communities they serve.

This approach is reiterated in the National Development Agency Act of 1998. The act defines the primary objective of the NDA as to contribute towards the eradication of poverty and its causes by granting funds to civil society organisations to carry out projects or programmes aimed to meet the development needs of poor communities. It also aims to strengthen the institutional capacity of other civil society organisations involved in direct service provision to poor communities.

To access these resources, NPOs must be willing and able to register legally and deal with complex registration procedures, funding applications, forms, reports, annual audits regular inspections, and record keeping. This environment is more conducive for the operation of large and well-organised NGOs than small NGOs and CBOs that operate in less formal circumstances and cater to poor and marginalised communities. The latter could possibly benefit from becoming intermediaries between NGOs that receive funds and the communities where the funds are to be spent.

Some government agencies have published policy guidelines and operational procedures to govern a complex process of tendering and sub-contracting aimed at drawing businesses and NPOs into the delivery process. This is an opportunity for NPOs to shape the way delivery works and to access resources. A potential for a public space and policy framework for constructive relations between the state and civil society has emerged. Problems with the implementation of this framework have to do primarily with lack of managerial and institutional capacity in the various state agencies in charge of implementation, and at times the lack of political will to engage in such partnerships.

3.8 Regulatory framework relating to the registration of CSOs

Various pieces of legislation govern civil society organisations in South Africa, these include:

Common Law relating to Voluntary Associations (Voluntary Associations)

Three or more people can agree to establish a Voluntary Association either by written or verbal agreement. An unregistered organisation has legal identity in terms of Common Law. Generally, a Voluntary Association is governed by a written Constitution very similar to the one used by an organisation that is registered with DSD. Basically, the agreement (verbal or written) must make provision for the establishment of a separate entity; in other words, the organisation exists in its own right regardless of changes in membership. The assets or liabilities of the organisation are held separately from its members.²⁶

The Non-profit Organisations Act, 1997

This Act came into operation on 1 September 1998. This piece of legislation provided a facility for the voluntary registration of non-profit organisations. This registration process is simpler and cheaper than the processes associated with the registration of a Section 21 company or a Trust. In many ways, the NPO Act makes it possible for organisations that are generally constituted in terms of Common Law (see above) as Voluntary Associations, to register with a regulatory body, and to reap the potential benefits of entering a more formalised sector. The Act also repealed much of the Fundraising Act of 1978 that had been used by the Apartheid state to constrain the activities of oppositional NPOs. As the Legal Resources Centre states, "the Act adopts a 'carrot' rather than a 'stick' approach to public accountability in that the improved standard of governance and increased accountability and

²⁶ Mary Honey, 2000. *Legal Structures commonly used by non-profit organisations.*





transparency which voluntary registration is intended to promote, will both increase public and donor confidence in NPOs and encourage organisations to register. Experience is yet to prove whether voluntary registration is an appropriate strategy for achieving the objectives of the Act." ²⁷

The assumption was that, over time, benefits would accrue to those who registered, primarily for tax exemption from the South African Revenue Service (SARS) and increased potential funding from sources such as the National Development Agency and other government departments.

Significantly, the NPO Act made provision for creating a dedicated unit within the Department of Social Development to promote compliance with the legislation and to provide support to NPOs that were interested in the potential benefits of the legislation. Unfortunately, the coordination with other government departments needed to create these benefits has not been forthcoming.

By the end of 2000, the NPO Directorate had only registered 8,000 NPOs, half of which were previously registered under the Fundraising Act of 1978, but by 2003 the numbers had almost tripled and the Directorate had registered close to 23,000 NPOs (Umlaba Development Services 2004). The bulk of the organisations registered only as NPOs with DSD tend to be smaller community-based organisations many are Voluntary Associations, in contrast to larger organisations that have more extensive networks and resources, and which are likely to be registered as Section 21 companies in terms of the Companies Act of 1973 or as Trusts in terms of the Trust Property Control Act of 1988.

Companies Act of 1973 (currently under review)

Section 21 of the Companies Act of 1973 makes it possible for a company without share capital to register a legal entity with the Registrar of Companies within the Department of Trade and Industry.

Section 21 of the Companies Act requires that a non-profit company have at least seven members and at least two directors who are 'natural persons', governed by a Memorandum of Association and Articles of Association. These two documents must set out the activities and objectives of the organisation and its basic rules of operation according to a particular standard. A Section 21 company may solicit/invite funds (i.e. fundraise), it may invest funds with recognised institutions, it may not distribute funds/profits to its members but may pay them a salary for services rendered. Upon dissolution, any remaining funds or property of a Section 21 company must be donated to another non-profit entity with similar objectives (these provisions are similar to those required from a NPO registered with DSD).

The reporting requirements for a Section 21 company is quite strict, and is similar to the reporting requirements expected from profit-making enterprises. This is one of the issues currently under review.

Trust Property Control Act of 1988

The Trust Property Control Act of 1988 makes it possible for organisations to register a Trust with the Master of the Court office in their district, governed by the Department of Justice.

This Act places no limit on the amount of trustees in the organisation, but generally there are between three and twelve trustees. A registered company can become a trustee in an organisation, but this is highly unusual, in other words, members do not necessarily have to be 'natural persons'.

Contrary to a Voluntary Association or a Section 21 company, a Trust is not an independent legal entity, in other words, if there is litigation against or by the organisation, the trustees themselves can sue or be sued in their capacity as trustees (not in their personal capacity or affecting their personal estates), whereas in the case of a Voluntary Association or Section 21 company, the *organisation* itself can sue or be sued. It is only in exceptional circumstances that trustees, directors or governing board members may be sued in their personal capacity.

²⁷Mary Honey, *Guide to the Non-profit Organisations (NPO) Act* (Legal Resources Centre, 2001).





A Trust's founding document (not all Trusts are non-profit organisations) is a Trust Deed. The Trust Deed along with Trust Property Control Act and the common law lay down the rules of the operations of the Trust. There is supervision over the appointment of trustees, but not really over their activities, in other words, the Master requires to be notified of changes in the structure of the organisation, but not of much else. Rules over trading and dissolution of the organisation is specified by its own Trust Deed, but generally follows a particular format in the case of Non-profit Trusts (similar to the standards a Section 21 company).

3.9 Comparison with International norms

The International Centre for Non-profit Law (ICNL)²⁸ recommends the several basic internationally accepted principles for legislation relating to Civil Society Organisations (CSOs), which are contained in the table below. Since these principles are accepted as a valid guideline when it comes to non-profit law, part of the purpose of this assessment would be to see how South African law measures up.

Table 10: Internationally accepted principles for CSOs

Principle	Content of Legislation	Application in SA
1. Protecting Fundamental Freedoms	<ol style="list-style-type: none"> 1. Freedom of expression, association and assembly requires the free establishment of CSOs. 2. It should be relatively quick, easy and inexpensive for all persons (natural and legal) to establish a NPO as a legal person. 3. The organ(s) of the state vested with the responsibility of giving legal existence to CSOs should be adequately staffed. Decisions not to register an organisation should be appealable to an independent court. 4. A register of registered organisations should be available publicly. 5. Organisations should be permitted to voluntarily dissolve. Involuntary termination of an organisation should only be allowed after a requested correction of a violation has not occurred. Involuntary dissolution should be subject to judicial supervision. <p><i>Permitted purposes and activities</i></p> <ul style="list-style-type: none"> • NPOs should be treated like all other legal entities and be permitted to engage in activities to the benefit of their members and/or constituencies. • NPOs should be permitted to engage in 	<ul style="list-style-type: none"> • The NPO Act of 1997 itself attempts to make is 'quick, easy and inexpensive' to establish a non-profit organisation. • It is debatable whether the 'organ of state vested with the responsibility...' is adequately staffed. • A register is available publicly but could arguably be more effectively used for research purposes. • Organisations are permitted to dissolve voluntarily, provided that certain procedures are followed upon dissolution. Organisations are de-registered only after failing to submit reports, and furthermore have one month's time to appeal to a tribunal. • In many ways the NPO Act itself is an attempt to formalise and regulate the Voluntary Association sector which is otherwise governed by Common Law.

²⁸ International Centre for Not-for-Profit Law. 2001. *Checklist for NPO Laws*. Available online at: <http://www.icnl.org>.





Principle	Content of Legislation	Application in SA
	<p>public debate and discussion about government policies and actions</p> <ul style="list-style-type: none"> Any organisation engaging in an activity which is subject to licensing/regulation, should be subject to general regulatory requirements that apply to individuals, businesses and public organs <p>6. Where it is thought appropriate to establish a separate organ to determine whether an organisation qualifies for Public Benefit status, such an entity should be an independent, mixed commission (like the Charity Commission in the UK).</p> <p>7. Organisations should have access to the media in order to publicise their activities.</p>	<p>At least part of the purpose of registration in terms of the NPO Act is to lend organisations with a more legitimate and recognisable legal identity for the purposes of for instance, funding, to the benefit of their members and constituencies.</p> <ul style="list-style-type: none"> Organisations engaging in activities subject to regulation (like ECD for instance) are subject to the same requirements. A separate organ to determine Public Benefit Status exists (Tax exemption unit at SARS). Organisations have access to the media, inasmuch as it is affordable to them.
<p>2. Integrity and Good Governance</p>	<ol style="list-style-type: none"> Laws should require certain minimum provisions necessary for the operation and governance of an organisation, i.e. as laid down in a governing/founding document of an organisation. An organisation should have broad discretion to change its governance structure and operations within the limits of the law. The governing body of an organisation should be required by law to receive and approve reports on the finances of the organisation. Law should provide that officers and board members of an organisation have a duty to exercise loyalty to the organisation, and to execute their responsibilities with care and diligence. The law should provide that persons involved in an organisation must avoid any actual or potential conflict between their personal/business interests and the interests of the organisation. Prohibition on the distribution of profits and other private benefits: <ul style="list-style-type: none"> No earnings/profits may be distributed to persons involved in the organisation. 	<ul style="list-style-type: none"> Monitoring this is problematic, although it is required. Organisation has such discretion, but again it is debatable whether this applies to very small CBOs This is an issue. Many organisations have no financial reporting systems in place and often operate without any money (i.e. depend on volunteerism and donations of goods). This is a provision in the different pieces of legislation, but again, the monitoring of this is proving to be problematic. This is generally the case with most non-profit organisational types. A problem creeps in with for example cooperatives. It seems as if many cooperatives consider





Principle	Content of Legislation	Application in SA
	<ul style="list-style-type: none"> • No assets of the organisation may be distributed to persons involved in the organisation. • No assets/earnings may be used to provide personal benefits, directly or indirectly to any persons involved in the organisation. <p>6. Although basic standards of conduct should be required of all organisations, organisations should be permitted and encouraged to set higher standards through self-regulation.</p> <p>7. Laws should permit and society should encourage the formation of umbrella bodies to adopt and enforce principles of voluntary self-regulation.</p>	<p>themselves NPOs, leading to confusion about what may or may not be done with funds generated by the organisation.</p> <ul style="list-style-type: none"> • Umbrella bodies do exist, and it would seem as if the concepts of good governance, reporting and self-regulation are being encouraged within the sector.
<p>3. Financial Sustainability</p>	<p>1. Organisations should be permitted to engage in fundraising activities which are not to be regarded as economic or commercial activities.</p> <p>2. Fundraising through public solicitation should require registration with a state organ or independent supervisory organ.</p> <p>3. An organisation should be permitted to engage in economic and commercial activities, provided that:</p> <ul style="list-style-type: none"> • the organisation is operated principally for the purpose of conducting not-for-profit activities; and • no profits/earnings are distributed to persons involved in the organisation. <p>4. Non-profit organisations should be exempt from income taxation on moneys or items received from donors or government. Exemption for interest, dividends or capital gains, with greater preference for organizations engaged in Public Benefit activities.</p> <p>5. Donations by individuals/businesses to Public Benefit organizations should be subject to income tax benefits.</p> <p>6. Organisations should be allowed to engage in economic activities, as long as these activities do not constitute the principle purpose of the organisation.</p> <p>7. Public Benefit organizations should be given preferential treatment when it comes to VAT, other taxes and customs duties, provided that appropriate limita-</p>	<ul style="list-style-type: none"> • Reflected in the amendments to the Income tax law as it relates to non-profits in 2000. • Non-profits are allowed to engage in economic and commercial activities but are prevented from treating what is generated by such activities as profits, stipulated by both the NPO Act and in the model founding document/constitution distributed by DSD. This principle is the basis for the claim to preferential tax treatment as postulated by the processes leading up to the amendment to the tax law in 2000. This illustrated again the problems associated with the confusion around cooperatives: there seems to be significant confusion about appropriate organisational forms within the sector. Provision is also made for the exemption of donations made to Public Benefit Organisations in the tax law amendment of 2000. • Again the issue of the particular SA context: it would seem as if many organisations (non-profits and cooperatives alike) engage in what could be termed 'poverty alleviation' or 'income generation'. If such activities form the basis for the organisation's commercial





Principle	Content of Legislation	Application in SA
	<p>tions are in place to prevent abuse.</p> <ol style="list-style-type: none"> 8. Laws should promote the formation of endowments, like special tax incentives for donations to form endowments. 9. An organisation that is properly registered/incorporated should be allowed to receive donations/transfers from agencies in other countries. 10. Laws should encourage volunteerism, by encouraging employers to permit employees to engage in volunteer work. 11. Laws, including procurement legislation should encourage partnership between government and non-profit organizations. 	<p>economic gain, it becomes difficult to separate the 'principal activity' from activities for economic gain.</p> <ul style="list-style-type: none"> • Organisations are generally not prevented from receiving support, both domestically and internationally. • Laws do not prevent people from engaging in volunteer work, although it seems as if it represents a significant sacrifice in opportunity cost to most working individuals. On the other hand, volunteerism seems to be significant in the sector, with large numbers of organisations operated primarily on the time and labour of volunteers. • It is the conclusion of this assessment that a lot more could be done in terms of encouraging partnership between the sector and government, especially in terms of law and policy.
<p>4. Accountability and Transparency</p>	<ol style="list-style-type: none"> 1. All reports required of organizations should be as simple to complete and as uniform among state organs as is possible. 2. Reporting to a supervisory organ: <ul style="list-style-type: none"> • An organisation with significant public benefit activities or substantial public support should be required to report at least annually on its finances and operations. • Reporting requirements should contain provisions to protect legitimate privacy interests of donors and/or recipients, as well as confidential propriety information. • Consistent with normal state powers of inspection for all legal entities, the supervisory organ should have the right to examine books, records and activities of non-profit organizations. 3. Audits: <ul style="list-style-type: none"> • To ensure compliance, all reporting organisations should be subject to random and selective audit by the supervisory organ. 4. It is appropriate for separate reports to be filed with the taxing authorities. Different kinds of reports may be required for different types of taxes. 	<ul style="list-style-type: none"> • Herein lies a significant issue in SA: reporting requirements are generally not simple and is generally not uniform across all the regulatory bodies. Provision needs to be made for organisations who struggle to even keep track of finances, nevermind having it attested to by an accounting officer or audited. • Organisations in general are required to report annually. The different regulatory bodies do have powers to inspect records of organisations, but often lack the staff and capacity to do this. • Separate reports are currently required by SARS, the different regulatory bodies and other licensing authorities (see for





Principle	Content of Legislation	Application in SA
	<ol style="list-style-type: none"> 5. Any organisation engaging in an activity subject to licensing by a state organ should be required to file the same reports with that particular organ. 6. Any organisation with significant public benefit activities and/or support should be required to publish or otherwise make available a report of its general finances and activities. 7. In addition to sanctions to which non-profit organisations are subject equally with other legal entities/persons, it is appropriate to have special sanctions for violations peculiar to non-profit organisations. 	<p>example those requirements expected of ECD organisations).</p>

3.10 Funding for the sector

In the 1980s, European governments and other international donors looked for credible local agencies through which to channel their funds. The three largest were Kagiso Trust, the South African Council of Churches, and the South African Catholic Bishops Conference. Between them, these three channelled a total of R436 million from foreign sources in 1991 alone. The long-term support for 'struggle' NPOs in the context of a repressive regime meant that international agencies deliberately required little follow up and accountability in order to avoid close examination by the apartheid state.

This pattern of funds flowing directly to NPOs and their conduits changed after the first democratic elections in 1994. Bilateral aid began to flow to the new government, in a manner similar to that prevailing in other developing countries. The special status afforded South African NPOs fell away.

At the same time, international funding priorities began to focus more on developmental goals and to have greater programmatic coherence. In the past, the funding had gone to organisations working against the apartheid government, or filling the gaps in delivery to communities ignored by the state. In the post-1994 period, donors began to be more selective. Moving away from a direct political agenda, donors adopted a new development-oriented focus.

This shift coincided with changes in South African government funding to the non-profit sector. In 1995, a survey conducted by the Independent Development Trust (IDT) found that many of the 128 organisations surveyed faced serious difficulties: "Some organisations are now in such serious financial difficulties that they face closure in the next few months. Many others will be forced to retrench staff or curtail their operations." (*The Star*, 9 August 1995). The source of the problem, though, was not only the shift in donor funding, but also reduced government subsidies to welfare organisations. Those subsidies, which had been established under apartheid, became unsustainable. Welfare organisations that focused on food distribution, nutrition, literacy and social services found it very difficult to raise the levels of funds that they received in the past.

Fortunately for the South African NPO sector, another global trend in international development aid was underway. In the past, multilateral and bilateral development aid had focused predominantly on support to the state. However, in the 1990s, international agencies began to focus more on the role of NPOs. With a focus on the notion of civil society, and its role in development, bilateral agencies such as the European Union, DFID, USAID, SIDA and so on began to explore direct partnerships with and funding of southern NPOs.





One study of international government aid to South Africa between 1994 and 1999, commissioned by the South African government found that the amount of funding to NGOs from official sources (foreign governments and multilateral institutions) declined sharply from 1994 to 1995, but subsequently normalised and even increased.²⁹ It was likely this global trend to fund NPOs and civil society helped the South African NPO sector keep a foothold on bilateral aid funding.

Whether one saw the funding crisis as a myth, as a natural and healthy 'thinning out' of the sector, or as a real outcome of donor funding shifts, it is clear that some NPOs were greatly affected by the shifts in funding trends. The financial health of the sector, and the delays in negotiations about the National Development Agency, prompted the government to establish the Transitional National Development Trust (TNDT) in 1996. The TNDT had a two-year life span that was meant to feed into the establishment of the more permanent NDA, which is discussed below.

3.11 The Brain Drain and the Push to Build Capacity

During this period of great change, approximately 1994-96, many NPO leaders left the sector to take up positions in the new government and the private sector. At the same time that the sector was losing leadership, there were increasing demands on it to adjust to its new role. In the new era of development, NPOs had to improve their fundraising skills and their financial management. They were required to develop programme plans and clear objectives, and to meet more rigorous donor reporting requirements. As a result, the need for capacity building was highlighted both by donors and the sector itself. As Rams Ramashia of the South African National NGO Coalition put it, under apartheid "there was more money than could be spent. Now the reverse is true. NGOs have to adapt. It may not be a case of survival of the fittest, but it will be one of survival of the most efficient" (*Reconstruct, Sunday Independent, March 1996*).

Many NPOs struggled to meet these new demands, not only because of the turnover in staff and challenges in management, but also because of questions regarding their role and identity. As former comrades joined government, some NPO leaders saw their primary role as partnering with government to address the demands of building a new society. Others saw themselves maintaining a watchdog role to keep government accountable. Kihato and Rapoo in their report mentioned above found that many NPOs continued to be wary of government. Of the 233 NPOs they surveyed in 1998, most claimed not to have links with government in terms of funding or partnerships. Those most likely to have linkages with government worked in the fields of health and social welfare, followed by those in the education and training fields. Not surprisingly, NPOs that had democratic and political objectives were less likely to have such links with government.

Concerns were that financial pressures that encourage the voluntary sector to undertake government contracts would carry the risk of compromising their ability to carry out vigorous advocacy and lobbying work. The much valued autonomy and integrity of the voluntary sector might be sacrificed for the sake of financial survival as a 'delivery arm' of the state".

Despite these concerns, there was an extensive process underway of negotiating new policies. NPOs were advocating that government should make additional funding available to the NPO sector via new mechanisms such as the National Development Agency, the National lottery and tax exemption for NPOs. Let us pause to review them.

The National Lotteries Act of 1997

The National Lotteries Act makes provision for the operation of a countrywide lottery. The Lotto and scratch cards were launched in 2000. The money raised through the sale of Lotto tickets and scratch cards is to be distributed according to a formula: 50% to prizes, 20% as profits to the operating agency,

²⁹ International Development Organisation Synthesis Report, 2000.





and 30% to good causes. Five categories were established to further define "good causes" and these are the Reconstruction and Development Programme; Charities; Arts, Culture and National Heritage; Sports and Recreation, and; Miscellaneous Purposes. Naturally, NPOs expected to qualify for much of the funding from this source.

Research commissioned by the Non-profit Partnership and the Centre for Civil Society found that it was a full year after the first Lotto tickets were sold that three of the four distribution agencies were established, and then "only in the face of severe criticism from the general public and parliament. The Agencies remain severely understaffed, and it is clear that the attention given to the profit-making side of the gaming industry has not been matched by an equal commitment to maximize the quite enormous benefits that this industry offers to the arts, sports and charities-welfare sectors."³⁰

The report provides information about the kind of organisations funded by the lottery. Given concerns regarding organisational, administrative and financial capacity, applicants are expected to be registered NPOs and are required to provide three years of audited financial statements: "Opinions on the merits of this vary enormously within the sector. For some, this is unduly restrictive, as it effectively prevents many unregistered community based organisations (CBOs) from receiving funding, despite the fact that many of these organisations are very effective at delivering services at community level."

As a result of this concern and criticism from parliament, the Lotteries Board wants to make it easier for CBOs to apply for funding. The Director General for the Department of Trade and Industry responsible for the lottery asserted that the principle of offering smaller grants to help smaller organisations to get started had been accepted. It seems that they are encouraging larger NPOs to form partnerships with un-registered CBOs, but it is not clear to what extent the relaxation of the rules has resulted in different patterns of allocation.

The National Development Agency Act of 1998

In March 1997, government accepted a report of the Advisory Committee to the Deputy President entitled *Structural Relationships between Government and Civil Society Organisations*. The report recommended that a new, independent, statutory body, a National Development Agency, be established to coordinate policy consultations and dispense funds to civil society organisations. Legislation enacted the Agency in 1998, with the objective of supporting NPOs involved in poverty eradication and becoming a major donor to NPOs in the country. In addition, the NDA was legally charged to encourage policy dialogue between government and NPOs and to promote effective capacity building of NPOs.

Although the Act was adopted in 1998, the NDA board was not appointed until 2000 and initial disbursements only began in August that year. To give a sense of the scale of the money involved, according to the NDA's annual report for 2002/03, the NDA received R96 million that year from government, R70 million of which was allocated for disbursement. In the same year, the NDA received R5.5 million in special funds from the Department of Social Development and R46 million from the European Union. These are substantial sums of money but, unfortunately, not distributed efficiently due to on-going leadership, management and capacity problems in the Agency. The process of funding has been slow, and often contentious.

Taxation Laws Amendment Act of 2000

After many years of lobbying and advocacy by the NPO sector, this law was government's first attempt at creating an enabling fiscal environment for the NPO sector. Umhlaba Development Services conducted a study in 2003 to determine if NPOs had benefited from the new legislation. The study found that NPO that benefited the most from the legislation were organisations defined as NGOs,

³⁰Stephen Louw, *Smoke and Mirrors: The National Lottery and the Non-profit Sector* (CCS, 2002).





based in the urban areas, operating at the provincial and national levels, registered as Section 21 companies and members of networks or coalitions. These were "more likely to be aware of the new tax regulations, more likely to be registered with SARS, more likely to have received benefits from their registration - and if they have received benefits, more likely to have received large ones - and more likely to have received increased funding."

The converse, of particular interest for our current study, is that "organisations that define themselves as CBOs, organisations working in the rural areas, organisations based at community level, organisations registered only as NPOs, and organisations not affiliated with a network, were:

- Less likely to be aware of the new tax regulations
- Less likely to be registered with SARS
- Less likely to have received benefits from their registration, and if they have received benefits, less likely to have received large ones, and
- Less likely to have received increased funding.

3.12 Donor perspectives

During this period of significant policy development, donors were increasingly looking at issues of sustainability for the sector. Diversifying funding sources had become of the critical components of financial sustainability. As some commentators pointed out, however, the complexity of sustainability was not just about fundraising or self-financing, "but touches on virtually every level of organisational life, from governance to leadership, strategy, identity, systems, membership and public support, marketing, networking and alliance building, skills development and the enabling environment and more".³¹

Despite these multiple dynamics of sustainability, the focus has remained on funding, with various initiative exploring the tender process, investment, community foundations, endowments, local giving and fees for services and trading in products that could bring in an income. All of these efforts, including the development of the policy legislation described above, were conducted in the absence of extensive empirical data about the NPO sector.

The gaps in information are beginning to be filled with new research, such as the Johns Hopkins and Umhlaba Development Services studies mentioned above, as well as additional research conducted for the CSI Handbook. The latter concludes, based on a 2003 survey of 100 leading NPOs with budgets ranging from under R500,000 to over R50 million, that these NPOs receive 20% of their incomes from foreign donors (both bilateral and private).

For this same sample, corporate contributions account for about 25% of the funding, government accounts for 20%, with the remainder coming from private donations, fees for services and other sources. It is significant to note that for this sample, the National Lottery accounted for under 3% of the funding and the National Development Agency accounted for about 1%. The CSI Handbook acknowledges that, "the distribution might not be typical for the sector as a whole - due to possibly skewed inclusion of well-established NPOs in the research sample. Most of the less formal NPOs operate on shoestring budgets and may not have the expertise required to approach large multi-national funders...[thus resorting to] heavier reliance on government and self-funding".³²

The CSI Handbook for 2001 states that just under half of corporate grant-makers require their grant recipients to be registered NPOs, while the rest do not require such registration or do not know whether they do. Close to 50% of CSI expenditure in 2003 was allocated to education and training, and the

³¹ *Development Update*, 1, 3, 1997.

³² Vanessa Rockey, *CSI Handbook*, 6th edition (Trialogue, 2003).





Handbook points out that "the most striking shift in CSI spending over the past several years has been the steady increase in funding for the health sector, primarily as a result of corporate allocations towards HIV/AIDS projects."

The CSI funding for registered NPOs and organisations working in education and health does not necessarily translate into funding for community-based organisations. In fact, 66% of CSI budgets for 2003 were spent in urban and peri-urban areas, "largely a factor of the complexities associated with rural development, the fact that company workforces and markets are mostly urban, and the large metropolitan developmental demands." This assertion is bolstered by research that indicates that about two-thirds of CSI funds are spent on people closely related to the company: employees and their families, or local communities in which the company operates. CSI funds thus do not generally flow to smaller CBOs that may be more likely to be registered as NPOs. It would be important to conduct further research with those organisations to determine their primary sources of funding. We must pay particular attention to those 53% of NPOs (informal community-based organisations) identified in the Johns Hopkins report, some of which may be registered with the Directorate but most of which are likely to retain informal existence.

Other research findings suggest a similar conclusion. A 2001 report by Caroline Kihato argues that the shifts in donor funding in South Africa since 1994 has resulted in a narrower range of NPOs receiving funding support. Her research shows that "visible, urban-based, formal NGOs with reasonable administrative, research and delivery capacity are more likely to receive donor aid. By contrast, informal, less visible, grass-roots organisations located primarily in rural and per-urban areas are less likely to do so."³³ Gerald Kraak points to a similar trend that donors have shown a preference to fund larger organisations or networks that can serve as conduits for funding to smaller organisations in an effort to reduce administrative expenses. He concludes that this trend has "favoured larger, urban, more sophisticated NGOs to the detriment of smaller (quite often, innovative) projects".³⁴

What are the conclusions we can derive from this survey of funding for the NPO sector?

- Overall, NPOs receive the bulk of their funding from local sources, namely government and the private sector
- Corporate social investment budgets are predominantly (66%) spent in urban areas
- While overseas development aid now flows through government, there is often a provision requiring that a certain percentage of the funding goes to NPOs
- Government funding, the bulk of which is in social services, health and housing, tends to go to well organised, formal NPOs
- International private foundations predominantly fund larger, more sophisticated NGOs that are often urban based
- The National Lottery has had some restrictions on funding small, community based organisations, but is trying to overcome this
- Section 21 Companies and other more sophisticated NPOs are benefiting most from the new law offering tax exemption
- Voluntary Associations that are registered with the NPO Directorate tend to be smaller and less well resourced than Section 21 Companies.

We can therefore conclude that NPOs registered with the Directorate do not often receive tax exemption, do not receive the bulk of corporate funding, and do not receive the bulk of international private funding. Many of them receive a significant portion of their funding from government sources and often rely on self-funding mechanisms and volunteer labour and services as a result of the fact that they do not have significant external funding sources.

³³ Caroline Kihato, *Shifting Sands: the Relationship between Foreign Donors and South African Civil Society During and After Apartheid* (Centre for Policy Studies, August 2001).

³⁴ Gerald Kraak, "The South African Voluntary Sector in 2001: A Great Variety of 'Morbid Symptoms'", *Development Update*, 3, 4, 2001.





3.13 Partnerships: opportunities and challenges

Despite all the obstacles identified above, non-profit organisations have managed to raise substantial funds from the state and private sources, and they employ a large number of professional staff and volunteers. This financial and organisational standing puts them in a good position to address issues of poverty eradication, especially if the new funding mechanisms take effect as planned. At the same time, they must address questions of capacity and policy direction to make the most of their resources.

Community-based organisations, which dominate the non-profit sector numerically, are largely concentrated in areas of service delivery at local level, to address immediate needs of poor communities. Many of them go about their activities without needing or seeking partnerships with government. If they were to be integrated to a greater extent with government's efforts this will most likely be done locally, based on immediate circumstances, rather than through an overall national or provincial policy framework. The larger formal NGOs are in a better position to get involved directly in policy and implementation, and to benefit from new funding opportunities. They must balance, though, their roles as delivery agents acting for or together with government, and their role as critical watchdogs.

As part of the Johns Hopkins study, participants in the organisational survey were asked about their perspectives and priorities. Issues related to capacity (training, lack of policy direction, professionalism, managing volunteers, and skills) were not rated highly as concerns occupying NPOs. The only capacity problem that was rated high was lack of experience in fundraising. The problems seem to be not so much the availability of funds as such, but the capacity to access and manage them effectively and compete with other sectors for them.

When given statements to which they responded, respondents expressed the greatest disagreements with the notion that NPOs are as bureaucratic and unresponsive as government, that the public tends to view NPOs with suspicion, and that government tends to view NPOs with suspicion.

Statements that generated the strongest levels of agreement were that:

- NPOs' main role is to service the needs of people rather than profit margins
- NPOs are located much closer to the needs of the people than government
- The needy would be ignored if not catered for by NPOs
- NPOs are able to create a sense of community that government agencies cannot
- NPOs serve those in greatest need.

Respondents showed lack of concern about the impact that funding agreements with government could have on NPOs. This was not seen as something that could interfere with the goals or purposes of NPOs, undermine their critical watchdog role, or turn them into businesses. Questions on the relationship between NPOs and government revealed that NPOs thought that they were closer to the people and do a better job of serving their needs, that they were more innovative and less bureaucratic, and that government was shifting more and more tasks onto NPOs due to its own lack of capacity. This confidence was tempered by concerns with growing competition on the part of the private sector, for jobs and contracts with government.

On the part of government, the question is the extent to which it shares this perspective and is willing to enter partnerships with NPOs, in which the latter not only play a role in delivery and implementation, but also share the task of setting the policy agenda. Affecting government response would be the capacity of NPOs to play such a role in specific instances based on their track records. Neither government departments nor NPOs are homogeneous entities and their concrete relationships will be affected by the specific characteristics and contribution of each side to the partnership in each case. We also have to consider that the burden of delivery and dealing with backlogs will increasingly fall on





local government, and relations between municipalities and NPOs are likely to be governed by local dynamics rather than flow from a grand design applicable to all localities.

The interest in partnerships for delivery is not unique to South Africa. It has been motivated in many places by various reasons, some of which are outlined below:³⁵

- A perception of the limitations of the state as a vehicle for social change due to its inability or unwillingness to be accountable to society. Recent analysis has also questioned the level of accountability of NGOs, as opposed to elected representatives in government, or membership organisations such as CBOs
- Recognition of the comparative advantage of NGOs in delivering at local level. A 1998 World Bank evaluation noted that NGO/CBO involvement in development projects contributed to the projects' success, by providing opportunities for poor communities to participate
- Serious concerns over the economic inefficiencies of state delivery mechanisms have also been expressed by international institutions, especially with regard to bloated bureaucracies of many developing countries and inefficiencies of centralised government control over development
- NGOs do not represent a recurrent cost for the state, and they frequently manage to raise funds to match state contribution.

Having identified the limitations of state action and the advantages of NGOs, we must realize that the purpose of partnerships is precisely that of combining the strengths that different sectors bring to the task of development delivery, rather than replacing one sector (with its limitations) by another (with its own limitations). The state has a direct role to play both in service delivery and in creating an enabling environment for the work of other sectors. The nature of the relationship is likely to be collaborative when the state and NGOs share goals and strategies, and they may work together well even if they adopt different strategies, as long as their goals - efficient and comprehensive service delivery - are similar, in which case their strategies must be complementary.

In a 2000 study, Alan Fowler gives examples of partnerships that may include support by the state to civil society organisations through grants or subsidies, seconding staff from the state to non-state schools or clinics, and paying subsidies to welfare organisations by the Department of Social Development for providing welfare services on behalf of the state. In other instances the state may offer contract to organisations to do work for it: NGOs undertake work on land rights work for the Department of Land Affairs, and health education initiatives on behalf of the Department of Health.

In a contractual relationship there are three starting conditions, which allow some space for negotiation and determine the nature of the partnership and its effects:

- The degree of goal coherence between the state and the NGO: for example the protection of street children, where the shared goal would be return of the children to their families
- Room for negotiation over issues such as the methodologies to be used or the processes to be put in place to achieve the goal
- Direction of influence: who is trying to co-opt whom? NGOs may be successful in co-opting the state into their approaches, such as ensuring that a project design includes participatory needs assessments.³⁶
- A crucial issue here are the advantages and disadvantages that NPOs bring to partnerships with the state. Motala and Husy examined several case studies to illustrate concretely (and not just theoretically) whether the claims that NGOs are more efficient agents of delivery - as mentioned earlier - are indeed true, due to the NGOs' values, ability to reach marginalised communities and identify their needs, and to be flexible in implementing programmes.

³⁵ Shirin Motala and Dave Husy, "NGOs do it Better: An Efficiency Analysis of NGOs in Development Delivery", *Development Update*, 3, 4 (2001).

³⁶ Alan Fowler, *Civil Society, NGOs and Social Development: Changing the Rules of the Game* (UNRISD, Geneva, 2000).





Issues of efficiency, they argue, are not restricted to the implementation of projects, but to all levels of the policy cycle, including policy formulation, planning, project implementation, and monitoring and evaluation. For example, at the policy and planning level, the facilitation of stakeholder participation is a critical area, and one of the comparative advantages the non-profit sector provides.

NGOs generally suffer from limitations as well, in the areas of service delivery and development interventions, which include the following:

- The local focus of NGOs and CBOs makes it difficult for them to implement programmes on a large scale
- NGOs and CBOs usually have no uniform approach. Putting in place uniform standards would help standardise outcomes, though the approaches adopted for reaching those outcomes and meeting standards may vary because of local conditions and needs
- Lack of co-ordination with stakeholders and with other NGOs can lead to the duplication of services and fragmentation of delivery
- NGOs cannot guarantee the continuity of their inputs. They may be diverted from their core function and mission.

To examine these contentions and study efficiency in delivery, Motala and Husy used several indicators in research commissioned by the Non-profit Partnership. They concluded from their case studies that NGOs provide not only qualitative benefits for the state, through their roles and relationships in service delivery for development, but also financial benefits, though these are not always easy to define and measure. They identify nine indicators, as outlined in what follows.

Values base driven programmes and methodologies: the commitment to participatory approaches to development facilitation is reflected in the involvement of stakeholders in decision-making. This has costs - participatory processes require time and money. Pressures can undermine values and principles. Power brokering is sometimes an outcome of using traditional methods of facilitating community participation. The notion of 'community' is frequently not clearly defined

Impact and coverage: Coverage was uneven in the case studies. Some NGOs are tackling issues at a national level, others operate at a provincial level, while still others work at local level. Coverage is constrained by institutional capacity and resources, both human and financial. Interventions are reaching rural and disadvantaged communities, although on a relatively small scale

Co-ordination and integration with other work and stakeholders: All the NGOs in the case studies demonstrated considerable investment in supporting co-ordination and integration across development interventions. The benefits were evident in the shared responsibility for implementation, the expansion of capacity and the impact on target communities

Continuity and sustainability of interventions: The case studies reflected a wide range of initiatives aimed at ensuring the sustainability of the intervention beyond the life span of the project. These included building local capacity, enhancing the capacity of relevant authorities and transferring skills and technologies that could be sustained without the continued use of external resources. Not all of the interventions were sustainable without external funding. If NGOs cannot cover costs, the consequence would be lost capacity

Accountability: In the case studies it was clear that systems were in place for effective management and financial accountability. The view of NGOs as driven by passion but with no internal efficiency did not prove true

Delivery effectiveness: the following emerged from the case studies:

- The sector was using international and other sources of funding which would not necessarily be available to the state





- NGOs had the ability to charge lower rates, draw on a pool of existing resources within the organisation, build on existing relationships and networks and thereby add value to a project. They might even subsidise the project with other resources
- The state ended up receiving a subsidy to meet its statutory obligations because the NGO sector was filling key gaps with its own resources. Even where the state made a contribution, via a subsidy or contract, the value of the input received from NGOs usually exceeded the costs to the state
- Relying on tenders and subsidies meant considerable risks for NGOs. Their ability to manage and adapt to the potential risks was key to their success.

Flexibility in delivery: The NGO sector was flexible, enhancing its capacity to respond to needs when they arise. However, the sector was often accused of lacking focus due to the diversity of its approaches and interests. The costs to NGOs themselves included staff burnout, disruption of programmes, and the diversion of resources intended for other work

Employment generation: The NGOs in the case studies had different capacities to generate employment and it was impossible to generalise about the matter

Volunteer mobilisation: The sector mobilised volunteers to take part in the work of NGOs, and extend the scope and impact of their projects despite financial constraints. We must realise though, that effective volunteer mobilisation required costly training and supervision, mostly in terms of staff time but also money - transport, food, and so on.

From that study we could conclude that there was a need to introduce analysis of efficiency in service delivery, which should include cost analysis in project planning and implementation, and enable comparisons between sectors (state, private sector, NPO sector). The analysis should allow us to identify the strengths and weaknesses of each sector, and on that basis devise partnerships that would enhance optimal collaboration in the cause of development. Clearly, the notion of efficiency should not be restricted to financial calculations and it must consider other aspects such as quality of delivery outcomes, popular participation, voluntary activity, solidarity, and so on.

A subsequent study undertaken by Dave Husy for the European Union involved consultative workshops with developmental NGOs and CBOs in mid-2002. The study covered a range of issues, including two that are directly of relevance here: delivery of basic services and public-private partnerships.³⁷

One of the issues that emerged from consultations with participants in the study was the tension between playing a direct role in service delivery and playing a role in monitoring and assisting delivery by the state. Some NGOs were concerned that their critical independence would be compromised, and emphasised that not all NGOs should or could engage in service delivery. Another concern was that the necessary attention to the priorities of local people would be sacrificed in order to meet contractual obligations to government. To overcome this problem it was suggested that participation and people-centred development should become an indicator alongside the more quantitative delivery targets.

NGOs argued that their advantages relative to government included greater ability to coordinate relations with communities and CBOs, a focus on empowerment to enhance community ownership of projects, better response time to development needs, less bureaucratic procedures and ability to offer cost-effective services. Problems included lack of clear mandate from communities and accountability to them, and internal tensions in the NGO sector that may hamper delivery.

With regard to CBOs, they were seen to be playing a crucial role in delivery by giving communities a sense of ownership of the development process. They were regarded as providing important links between the communities and external forces (be they NGOs, government, or donors). However, they

³⁷ Dave Husy, *Civil Society Consultations on EU MIP for South Africa* (Interfund, 2002).





seemed to suffer generally from weak capacity that hampered their ability to function effectively in order to facilitate delivery. The relations between NGOs and CBOs were also a source of concern, with the former at times using the latter to facilitate access without acknowledging their contribution. Direct relations between the state (and donors) and CBOs may also become a problem, with NGO playing an intermediary role.

Partnerships with government were viewed favourably as long as they did not force NGOs to abandon their independence and become mere delivery agents on behalf of government. The need to meet strict bureaucratic rules, follow complex tender procedures and observe cumbersome reporting and accounting requirements was an issue frequently raised as an obstacle to constructive relations with government. From a community-based perspective, contracts with government tend to be signed with larger and better-organised NGOs, marginalising informal CBOs and smaller NGOs with limited capacity to adhere to the requirements of contractual work.

3.14 Conclusions

The literature review and examination of recent relevant research projects³⁸ has yielded the following general conclusions, on the basis of which several recommendations can be drawn in order to facilitate an enabling environment for NPOs, and successful partnerships between them and state structures:

3.14.1 Partnerships

In principle, *all parties concerned are in favour of partnerships between civil society organisations and government*. The precise meaning of the term 'partnership' is open to different interpretations, however. State officials tend to use it to call on NPOs to implement government policies and provide services, while NPOs tend to use it to advocate a greater role for themselves in policy formulation and decision-making, rather than merely providing technical assistance to the state. To make partnerships feasible and successful, *a clear definition of the envisaged role of each partner must be established*, through negotiations between the parties, rather than through the imposition by one - the state - on the others. The model of partnerships chosen should reflect the specific features, needs and concerns of each field, rather than provide a universal model valid for all circumstances. It should be possible to focus on the determination of policy in one area, on service delivery in another, and so on.

In reaching a balanced assessment of their partnerships with the state, NPOs must realise that the grand policy formulation phase of the early transition years (mid to late 1990s), which was characterised initially by passionate intensity and lofty visions, has passed and is unlikely to be resurrected in the same form. This is not to say that policy cannot or should not change and address new concerns, as well as old concerns in new ways. *The focus today in most areas, however, is indeed on delivery, and that is what communities largely expect*. Nostalgically invoking the days of 'the struggle', and the transition days that seemed to offer unlimited prospects for re-shaping South African society, may be fun, but not very practical. It cannot be a basis on which government and international agencies form partnerships with NPOs.

3.14.2 NPOs' strengths and weaknesses

NPOs enjoy comparative advantage in service delivery due to their more consultative approach, a focus on community empowerment, and ability to respond more directly and immediately than government to community needs. This should be seen as more than a technical advantage. While the overall formal policy guidelines in most areas are not likely to change much, as government feels it has won in April 2004 a popular mandate for its approach, there is a big room for constantly refining the precise policy goals, adjusting modes of delivery to local circumstances, increasing the quality and quantity of popular participation, and introducing a more customised touch that would allow local needs and concerns to drive policy forward.

³⁸ This section relies on the conclusions outlined in the research reports mentioned earlier as well as specifically on *Civil Society in South Africa: Opportunities and Challenges in the Transition Process* (CASE, Johannesburg, 2004).





The notion of advantage applies particularly to organisations working directly with indigent and marginalized communities on issues of self-organisation, skill development, training, women's empowerment, and so on. It is less applicable to organisations that focus on delivery of grants and formal services or lobbying and advocacy. We may regard this advantage as an opportunity that must be built on and used to enhance delivery and to convince donor and development agencies that it worth their while to invest in the work of these organisations. The challenge is to retain this advantage and not to let the consultative and participatory approach hamper delivery. We may agree that it is better to have slower but deeper delivery, if it gives communities the time and space to make a meaningful input into the delivery process (its aims, priorities, pace). Still, the criticism voiced at times by government officials, which argues that focusing too much on consultation slows down the pace of delivery, must be addressed.

Non-profit organisations frequently suffer from relative lack of capacity, and they cannot guarantee continued and sustained interventions. This is related to limited financial and human resources; high staff turnover; lack of long-term security, which prevents long-term planning; dependence on the whims of state and donor agencies, who may shift their policy and funding priorities thus putting pressure on NPOs to re-adjust their focus and approach; and limited pool of skill, partly as a result of loss of many experienced personnel to the private and state sectors after 1994, and partly as a result of the demand for more professional services, which increased the level of skill required for successful performance.

Another difficulty is related to the impression that the accountability of NPOs - particularly NGOs - to communities is not always assured, and that the mandate they carry is not clear. Unlike government, they do not have the political power that comes from electoral support; unlike donor agencies they do not have the financial power that comes from control over resources; unlike communities and community-based organisations they do not have the moral power that comes from representing people on the ground directly. Although frequently they serve as a crucial nodal point between all three forces above, and are essential to partnerships between them, in a sense they have the least ability to stand on their own.

The dependence of NPOs on external financial support may thus compromise their ability to pursue developmental policies according to their values and preferred mode of operation. Without such ability their contribution will be diminished. Keeping this in mind, we need to deal with issues of funding directly. Donor agencies can play a role in developing a more transparent formula for allocating funds to fields and sectors, and making it clear what can be expected from the state in this regard. It is crucial that both state and civil society organisations regard funding not as a god-given right, but as an allocation in exchange for specific tasks and services with precise aims. A tripartite forum bringing together donor agencies, state structures and NPOs would be able to deal with these issues on a case-by-case basis and develop agreed upon criteria for allocation of budgets and monitoring of expenditure.

The strengths and weaknesses of NPOs, combined with those of the state, make them ideal partners. The state can guarantee institutional and financial continuity as well administrative and implementing capacity through its own or outsourced personnel. It operates through formal and user-unfriendly procedures that are not conducive to effective delivery. NPOs can contribute more 'friendly' capacity that is in tune with local needs and adjusted to specific conditions. To reach optimal relations of partnership, they need to talk more frequently. The call for regular, formal and informal, channels of communications comes across strongly from all involved.

The best way forward would be to combine the immediate and more egalitarian relationship that NPOs can establish with communities, with the more structured and organised approach that can be provided by government. In order to do that, service delivery and development objectives should be planned, implemented and monitored in collaboration between partners, as well as with affected communities (through CBOs, local government and direct representatives).





3.14.3 Accountability

While the *political accountability* for delivery remains with government (at various spheres), the *social accountability* must be shared with NPOs and donor agencies. This is a burden as well as a source of strength that must be used to benefit the target communities.

Finally, all the focus on partnership should not let us forget that there are *real differences in values and goals between sectors*, and that there is a need for a vigorous, independent and critical voice by civil society organisations. In some areas such as human rights, protecting refugees from abuse by officials (Home Affairs, and Safety and Security), for example, the focus should be on providing a critical input on government performance, and not mechanically on forming partnerships with it. There is a danger that in the quest for partnerships the position of civil society organisations as a critical conscience - possibly working together with dissident elements from within the state - would be lost. We must ensure this does not happen.

3.15 Recommendations

What can be done then in concrete terms? In order to move beyond principles, embark on a course of action that would create an enabling environment for NPOs, improve the relationship between them and state structures, and enhance the prospects of partnerships for delivery, the following need to be considered:

3.15.1 Space for exchanges

There is a need to create a *space for regular exchange of information and views*, and for consultations regarding policy and implementation, between representatives of the non-profit sector and the state. An overall forum would have too many issues to deal with, and thus become an impractical way of moving the discussion forward. A series of sector-specific forums would work better, and may be organised by theme rather than by department. Where feasible (in cases such as adult education, where delivery is the responsibility of the provinces), provincial forums may be considered as well.

For such forums to become meaningful they must have real powers and not be mere talking shops. This means government in particular must have the political will to subject its exercise of power to critical scrutiny by its potential partners, to accept input and abide by the results of consultations. Non-profit organisations may facilitate the adoption of this course of action by government by highlighting the benefits of partnerships for all parties involved. Donor and international development agencies may play a role by insisting on a meaningful participatory and consultative process as a precondition for project approval, and for support of a moral or financial nature.

This would not happen without someone taking the *initiative, preferably from outside of the state-civil society nexus, to ensure that the initiative is not seen as an attempt by one party to gain power at the expense of the other.* International development agencies, representing governmental and non-governmental constituencies, are best positioned to facilitate such an initiative. A call issued by alliance of donor agencies supporting partnership and good governance would have great impact. It could include a broad programmatic statement regarding the importance of partnerships, and an invitation to a national workshop in which various civil society and state officials would be present, and in which the values, goals, and modalities of possible partnerships would be discussed. The precise language used in the statement and the logistics of the initiative would be canvassed beforehand with various activists and state officials to ensure wide acceptability of the idea and initiative.

3.15.2 The NPO Directorate

The NPO Directorate has registered a large number of NPOs. The assumption has been that this process is valuable in itself, and that properly constituted organisations would earn increased donor confidence, and hopefully increased funding. In practice it seems that *organisations that register as*





NPOs are not claiming the benefits for which they hoped: tax exemption and growing amounts of funding from various sources

Given the fact that the NPO registration process has not borne fruit in terms of more funding and greater capacity, *it would not be strategic for the NPO Directorate to see registering NPOs as its primary function* into the future. It is clear that the staff of the Directorate has become overwhelmed with administrative tasks, and the Directorate should consider the possibility of outsourcing this function. Doing so would free up staff time and energy to focus on other aspects of the NPO Act and to build the capacity of the Directorate in other areas of need

It is clear that despite occasional government rhetoric critical of the NPO sector, Government departments such as Health, Public Works, Water *government is providing significant funding support to the sector* Affairs, Education, Housing and of course Social Development partner with NPOs in various ways. Given that many of the organisations that are registered as NPOs rely on some form of government funding, it would be *relevant for the NPO Directorate to monitor this funding*. It is in a position to monitor such partnerships and highlight those that are particularly strong and well conceived. This task sits well within the objectives of the NPO Act, which states that "within the limits prescribed by law, every organ of state must determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of Non-profit organisations to perform their functions." The Act also stipulates that the NPO Directorate is responsible for "liaising with other organs of state and interested parties" and that the Directorate must "prepare and issue codes of good practice for those persons, bodies and organisations making donations or grants to Non-profit organisations."

Although the Directorate does not have the political weight to dictate to other government departments and institutions, *it has the ability to monitor them, hold up examples for good practice, and comment on examples that are detrimental to the NPO sector*. For example, the Johns Hopkins study suggests looking at the development and housing sector (as opposed to the health or social services sectors) as a model for government funding of the NPO sector, because it attracts substantial government funding and many NPOs in development and housing are active in poor communities. Therefore, there is a *greater likelihood that government funding in this arena would have a positive impact on the poor*. *The NPO Directorate could take this up and promote such examples as a model for other departments to follow*. It would thus boost its public profile and become more visible and influential in the process.³⁹

³⁹ See in this regard Ricardo Wyngaard, *Evaluating the Impact of the Non-profit Organisations Act, No. 71 of 1997* (Legal Resources Centre, March 2003).





4. A PROFILE OF NPOS

4.1 Introduction

This section of the report describes and analyses the findings of the quantitative Telesurvey undertaken to measure the impact of the NPO Act. Five sample groups were selected in order to capture the conditions and perspectives of different types of NPOs. With the exception of unregistered Voluntary Associations, the sampling was done from the databases of registered organisations. The findings thus reflect the dataset rather than the universe of all organisations with a distinct legal or organisational identity. For convenience sake though we refer in the tables below to Section 21 companies, Trusts and Cooperatives, although strictly speaking these represent only such organisations as included in the respective databases.

Most questions included in the Telesurvey were directed at all the sample groups, with minor variations due to their particular circumstances. In addition, other questions addressed issues specific to each group. The analysis was conducted separately on each group, though the findings are presented across groups, to allow for comparisons between them. In this regard it is important to note (as discussed earlier) that the primary data set is the one of NPOs registered with DSD. This was sampled off the DSD's database. The other sample groups were much smaller and were included in order to compare and contextualise the findings for the main data set.

It is important to realise that the categories above are not mutually exclusive. In particular, many Section 21 companies (63% of those included in the Section 21 telesurvey, sampled from a DTI database), Trusts (100% of those included in the telesurvey, sampled from various sources) and Cooperatives (28% of them, sampled from NCASA's database), are also registered as NPOs. When referring to NPOs registered with DSD in this section, reference is made specifically to organisations that were accessed via the NPO Database supplied by the DSD. This group formed the biggest part of the total sample (525) and includes a small amount of organisations that maintain dual registration with other regulatory bodies (less than 5% of this dataset). When referring to Voluntary Associations registered as NPOs with DSD in this section, reference is made specifically to organisations included in the main data set after the dual registered organisations were taken out. As mentioned, the dual registered organisations represented less than 5% of the primary data set, and removing them reduced this data set to exactly 500.

To facilitate discussion of the characteristics of organisations registered with different regulatory authorities, the tables include an additional column reflecting the views and conditions of a sub-set of organisations selected from the main data set. These are Voluntary Associations Registered only with DSD only and not with any other authority. They account for 95% of the organisations registered in the NPO Directorate database, and therefore the findings for them would of necessity be very similar to those of the organisations drawn from the entire database (which includes organisations registered also as Section 21 companies and trusts). Many unregistered Voluntary Associations are in the process of registering themselves with the DSD. Of the original Voluntary Associations registered as NPOs dataset, 5% are also registered as Section 21 companies, Trusts or Cooperatives. The sample for the Triple registration Case Study (See 5.3) was drawn where these different legal entities intersected on the databases that were produced by the telesurvey. The views of all these categories of organisations regarding the DSD's contribution to an enabling environment for NPOs are of great interest.



All provinces were included in the Telesurvey. The breakdown of the different Telesurvey sample populations by provincial affiliation were as follows:

Table 11: Provincial representation by sample category (%)

Province	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Eastern Cape	9	10	4	12	38	6
Free State	7	7	2	29	1	6
Gauteng	34	34	55	4	13	31
Limpopo	8	8	4	2	2	8
KZN	17	17	9	22	30	29
Mpumalanga	6	6	4	2	6	
North West	4	4	4	2	5	10
Northern. Cape	3	2	2	2		
Western Cape	12	12	14	25	5	10
Total	100	100	100	100	100	100

4.2 Length of existence

Most organisations in the Telesurvey have been in existence for more than two years but less than 10 years. A substantial number of organisations have been in existence for over 10 years, particularly among Section 21 companies and Trusts. Compared to other organisation, unregistered Voluntary Associations are relatively young. This may account for their status, in that they were recently established and have had little time to go through the formalities of registration.

Table 12: Length of existence (%)

	NPOs registered with DSD	VAs registered only with the DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
< 1 year	3	2		4	1	2
1 - 2 years	16	16	2	12	11	22
2 - 5 years	32	32	13	16	38	48
6 - 10 years	21	22	18	18	30	18
10+ years	28	28	67	50	20	10
Total	100	100	100	100	100	100

4.3 Organisational activities and constituencies

Although many organisations are working in a number of service areas, the table below identifies their main activities. 'Education' and 'Social Services' are clearly the largest areas of activity for Voluntary Associations registered as NPOs, Section 21 companies and Trusts, while Cooperatives focus on 'Economic, social and community development'; unregistered Voluntary Associations focus on 'Health' (HIV/AIDS in particular), 'Social Services' and 'Community Development' as well.

Specifically for Voluntary Associations registered as NPOs, more than a third (37%) work in the field of 'Education', (27%) in the field of 'Social Services' (including 'Economic, Social and Community Development', 'Income support', 'Employment and training').



**Table 13: Main organisational activities (%)**

Main activity	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Culture and Arts	11	6	11	4	12	12
Service clubs	0	1			1	
Primary and Secondary Education	20	29	27	23	6	2
Other Education (including higher education)	7	4	5	10		2
Research	0	0	4	2		2
Hospitals and rehabilitation	0	1	2			
Nursing Homes	1	3	9	2		2
HIV/AIDS	3	7	4	4	1	29
Other Health Services	2	2		4		
Mental Health	0	1				
Religious Congregations	4	4	9	2		
Social Services	27	20	14	23	11	20
Income Support and Maintenance	1	1		2	6	
Law and legal services	0	0				4
Animal protection	1	1	2		1	
Economic, Social and Community Development	11	6	4	12	29	18
Employment and training	9	5		4	3	
Housing	0	0	2	1		
Business and professional associations, Unions	0	0	4			
Sports	1	1				2
Environment	1	1			6	

Most types of organisations were based at community level⁴⁰, with the exception of Trusts, which tend to be based at provincial level. Relatively few organisations were primarily based at the national level, Section 21 companies and Trusts were the only organisational types that have a significant presence at national level. Voluntary Associations registered as NPOs, Cooperatives and unregistered Voluntary Associations were overwhelmingly based in communities. The vast majority of all types of organisations (over 90%) defined individuals and communities as the main beneficiaries of their activities.

⁴⁰ Different definitions of CBOs are used in literature on the NPO sector. For the purposes of this assessment a CBO is referred to an organisation which brings together constituencies at a grassroots level to take action and make representation on issues of common interest. This definition therefore relates more to locality and target group than to actual size of the organisation.



**Table 14: Where organisations are based (%)**

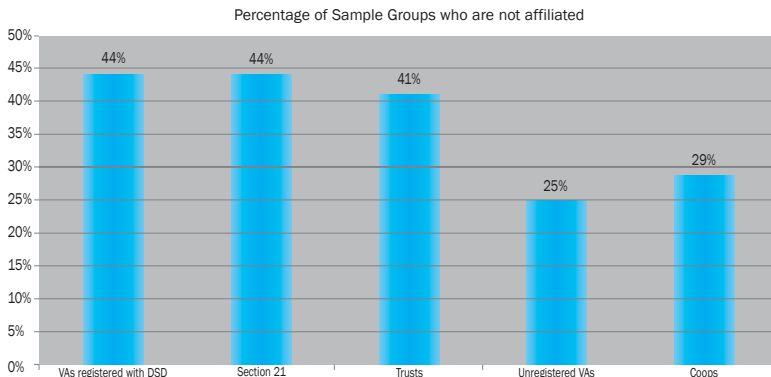
Base	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Community based	83	83	50	33	88	90
Provincially based	11	12	22	45	9	6
Nationally based	6	5	18	20	1	2
All of the above	0	0	9	2	1	2
Total	100	100	100	100	100	100

When asked about their geographical base, most organisations indicated that they were based in urban areas, with the exception of Cooperatives, which were primarily based in rural areas. Many Voluntary Associations (registered as NPOs and unregistered alike) had a substantial base in the rural areas (30% and 29% respectively).

Base	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Urban based	58	58	72	71	34	61
Rural based	30	30	13	16	60	29
Both	12	12	15	14	6	10
Total	100	100	100	100	100	100

Many organisations were affiliated to a network, forum or a coalition (38% of Voluntary Associations registered as NPOs, 43% of Section 21 companies and two-thirds of Cooperatives and unregistered Voluntary Associations). Others indicated a relationship with a government department (17% of registered as NPOs and 13% of Section 21 companies). A third of Trusts were Voluntary Associations indicated a relationship to a government department, but relatively few Cooperatives and unregistered Voluntary Associations indicated such relationships. Under half of the Voluntary Associations registered as NPOs were unaffiliated (44% for Voluntary Associations registered as NPOs and Section 21 companies) and of those who were affiliated only 30% registered with DSD through their affiliate.

As can be seen in Figure 9, a significant percentage of Voluntary Associations registered as NPOs (44%), Trusts (44%) and Section 21 companies (41%) are not affiliated to a network, forum, government department or international association. Out of all the organisational types, it seems unregistered Voluntary Associations are the most networked (only 25% are not affiliated).

Figure 1: Percentage of organisations who are NOT affiliated, by type of organisation



4.4 Employment

Of all organisational types in the Telesurvey, Section 21 companies employed the most full-time employees on average, followed by Trusts and Voluntary Associations registered as NPOs, with Cooperatives (those that consider themselves to be Non-profit Organisations, and which are either already registered with DSD or in the process of registering) and unregistered Voluntary Associations lagging far behind. In fact, most of the Cooperatives (76%) and unregistered Voluntary Associations (88%) had no full-time employees at all. The picture is reversed when it comes to volunteers, with Cooperatives and unregistered Voluntary Associations leading with large numbers of them, followed by Voluntary Associations registered NPOs, and Section 21 companies and Trusts lagging far behind.

The table below provides a summary of employment data, followed by more detail for each type of employment in subsequent tables. While the overall number of employees does not vary that much between different types of organisations, the balance between full-time employees and volunteers differs greatly.

If we choose to see this balance as an indicator of professionalism and organisational capacity, Section 21 companies and Trusts clearly are the most professional, Cooperatives and unregistered Voluntary Associations the least professional, and Voluntary Associations registered as NPOs are in the middle on both counts (full-time employees and volunteers). They are not as professional as Section 21s and Trusts, but much more professional than Cooperatives and unregistered Voluntary Associations.

Table 16: Average number of employees

Employment data	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Full-time	6	10	7.4	3	34	1.4
Part-time	1	0.6	1.9	0	60	0
Volunteers	7.3	3.2	3.8	9.9	6	9.5
Total	14.3	13.8	13.1	12.9	100	10.9

The tables below present the full picture of employee figures for all types of organisations, including full-time and part-time employees, as well as volunteers.

Table 17: Full-time employees (%)

# Full-time employees	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
0	26	27	7	31	76	88
1-5	37	38	30	16	5	4
6-10	15	15	15	18	3	2
11-15	7	7	13	20	5	
15+	15	13	35	16	11	6
Total	100	100	100	100	100	100



**Table 18: Part-time employees (%)**

# Part-time employees	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
0	84	84	89	78	100	98
1-5	11	11	6	8		2
6-10	2	2	2	8		
11-15	1	1	2	2		
15+	2	2		4		
Total	100	100	100	100	100	100

Table 19: Volunteers expressed as a percentage

# Volunteers	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
0	29	28	69	49	22	14
1-5	23	24	9	22	5	29
6-10	17	17	8	20	11	12
11-15	7	7	2	6	20	8
15+	24	24	11	4	42	37
Total	100	100	100	100	100	100

When we look at the breakdown of employment figures between different tasks performed within the organisation, the picture is similar to the above. Section 21 companies had more managerial and project staff, compared to Voluntary Associations registered as NPOs, Trusts and unregistered Voluntary Associations.

Table 20: Professional staff (average number of staff)

Employment data	VAs registered only with DSD	Section 21	Trusts	Unregistered VAs
Managerial staff	3.4	4.2	3	0.8
Project staff	3.7	6.7	4.4	2.3
Admin staff	2.2	3.9	2.6	0.9

4.5 Financial Capacity

As the Table below makes clear, there is a great deal of variation in the financial resources available to different types of organisation. As shown throughout this report, Section 21 companies and Trusts are the best-resourced and institutionalised organisations, Cooperatives and unregistered Voluntary Associations are the least resourced, and Voluntary Associations registered as NPOs occupy a middle position.

Of note here is the large proportion of organisations with very limited or no income (less than R50,000 a year), especially among unregistered Voluntary Associations (78%), Cooperatives (74%) and





Voluntary Associations registered as NPOs (73%). Few of the Section 21 companies (18%) and even fewer of Trusts (8%) fall into this category. At the other end of the scale, fairly large numbers of wealthy organisations with revenues over R1 million exists, among Section 21 companies (24%) and Trusts (34%), and much less so among Voluntary Associations registered as NPOs (0%). The average income of a Voluntary Associations registered as a NPO is between R50,000 and R150,000, but as the table indicates relatively few organisations actually have that income. Most fall below it, and a few above it.

The sources of the revenue vary, and the most common source for Voluntary Associations registered as NPOs are private contributions including membership fees. School fees are also a major source of income, as educational institutions are relatively prevalent in this category.

Table 21: Annual Revenue (%)

Annual Revenue	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
0 - 50 000	69	73	18	8	74	78
50 000 - 150 000	14	14	26	37	15	18
150 000 - 300 000	6	5	15	4	5	2
300 000 - 500 000	3	2	9	8	1	2
500 000 - 1 million	4	4	7	10	1	
Over 1 million	4	2	24	34	1	
Total	100	100	100	100	100	100

Only a few organisations did not pay their staff salaries in the last two months due to scarcity of resources. Large numbers of organisations rely on volunteers however and therefore do not pay salaries at all.

Table 22: Salaries Paid in the last two months (%)

Salaries paid last two months	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Yes	50	49	94	71	26	16
No	10	11		2	8	8
Only Volunteers	40	40	6	27	66	76
Total	100	100	100	100	100	100

Generally, organisations were aware of the NPO Income Tax regulations, and many of them lodged applications with SARS for tax exemption. As could be expected, this was the case particularly for Section 21 companies and Trusts. Unregistered Voluntary Associations were the least likely to have applied for such exemption -which may explain their plans to register: anticipation of greater ease in accessing tax exemption. Interestingly, Cooperatives are also applying for Income Tax exemption, with about 19% of those Cooperatives who are registered with DSD as NPOs having lodged applications for tax exemption. It should be kept in mind that some of the Cooperatives with dual registration display characteristics more in line with the NPO organisational form than with a Cooperative organisational form, and therefore could very well qualify as a Public Benefit Organisation (PBO), depending on whether they disclose their status as a Cooperative when they apply to SARS. (See 6.6.1 for The Cooperative/NPO dual registration case study).



**Table 23: Awareness and use of tax legislation**

Aware of tax regulation	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Yes	69	69	89	98	49	51
No	30	30	11	2	51	47
Applied for tax exemption						
Yes	47	46	78	96	28	2
No	50	51	22	4	60	90

4.6 General Conclusions

The most important aspect of the Telesurvey is the evidence of a clear divide between the types of organisations. Section 21 companies and Trusts are the best resourced, best informed and have the greatest capacity to understand and benefit from legislation governing CSOs. Cooperatives and unregistered Voluntary Associations are least resourced and capacitated, with Voluntary Associations registered as NPOs occupying a middle - to lower position.

Results from the Cooperative Telesurvey seem to indicate a certain amount of confusion within the sector in terms of appropriate organisational forms, organisations that display characteristics of NPOs sometimes register as Cooperatives, and vice versa. Organisations also adapt to the funding and legislative environment by registering different legal entities (see Cooperatives/NPO dual registration case study, as well as the triple registration case study in section 5.3).

Voluntary Associations registered as NPOs with the DSD, who are not registered as anything else (i.e. not a section 21 or Trust or Cooperative), occupy a middle position between the groups. In other words, the NPO Directorate caters primarily to organisations with low to medium levels of resources and capacity. The DSD could therefore either design a strategy to extend its reach to organisations occupying the lowest and highest levels of the scale, or could focus more intently on organisations occupying the medium - to lower levels of the revenue and capacity scale.

The two dataset were inserted for comparative purposes, i.e. the DSD NPO dataset and the Voluntary Associations registered with the NPO, it is important to note that they are not fundamentally different. They provide or useful information nevertheless.





5. OBJECTIVE 1: ENABLING ENVIRONMENT

This section of the report provides an analysis of each objective of the NPO Act. It highlights the impact the Act has made on the NPO sector according to the themes as prescribed by the objectives.

Theme Indicators: Creating an Enabling Environment

SPECIFIC INDICATORS TO MEASURE PROGRESS OF THE ACT	DEFINITION OF THESE INDICATORS
1. Enabling Environment	The extent to which an enabling environment for NPOs has been established in South Africa
2. The State and the enabling environment	Has the state met its responsibility to contribute to provide a supportive environment for non-profits as is stipulated in Chapter 2 (3) of the Act?
3. NPO Directorate and the Enabling Environment	Has the NPO Directorate met its responsibility to create an enabling environment?
3.1 Knowledge of NPO	This indicator looks at awareness, knowledge/myths about the Act.
3.2 Knowledge of process of registration	This looks at the awareness of how to go about registering.
3.3. Types of organisation's ease/accessibility to NPO registration process	This indicator measures chapter 2 # 5 of the Act.
3.4 Benefits received by organisations as a result of registering with the NPO Directorate	This measures actual benefits the organisation achieved through the registration process

Whilst there are other components of the Act that were set in place to promote the 'enabling environment' such as the establishment of the Technical and Advisory Committee, these were not active at the time of the impact assessment and it should be noted that they exist in the legislation but not practiced by the Department.

5.1 Telesurvey Organisations' Perceptions of an Enabling Environment

Different types of Non-profit Organisations surveyed during the course of the national Telesurvey were asked whether they thought the current NPO Environment made it possible for their organisations to function effectively. The differences in responses between different types of organisation are real but not very high, with Voluntary Associations registered as NPOs somewhat more pessimistic about the environment (only 47% of registered NPOs and 36% unregistered Voluntary Associations believe such an environment exists either "very much" or "somewhat"). Section 21 companies and Trusts were more optimistic (59% of the former and 68% of the latter believe such an environment exists "very much" or "somewhat").

Table 24: Perceptions of an Enabling Environment (%)

	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Very much	23	23	26	24	31	22
Somewhat	25	24	33	44	23	14
Neutral	19	20	18	18	25	29
Very little	20	20	11	6	17	12
Not at all	13	14	11	6	3	23
Total	100	100	100	100	100	100





Perhaps the reason for this relative optimism or pessimism has to do with the identification of obstacles to organisational functioning, which would make organisations regard the environment as less enabling. By far, the most frequently cited obstacle mentioned by organisations all the organisations in the survey, is financial. Capacity is also a serious concern and so is the availability of staff (though that is mostly a function of funds and capacity).

Table 25: Obstacles to functioning (%)

Obstacles to functioning	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Lack of staff	11	9	2	6	9	20
Lack of funding	92	81	81	68	84	88
Lack of capacity	15	4	7	6	16	12
Cannot access networks	1	0				6
No problems	3	2	13	4	6	2

Every sample group interviewed (refer to NPO Telesurvey for details) except unregistered Voluntary Associations indicated that improved access to funding, more funding and sponsorship is what would make the environment for NPOs more enabling. Interestingly, unregistered Voluntary Associations indicated that Organisational Development and capacity building is what would make the environment more enabling for them.

Other considerations included the ability of organisations to take part in the policy-making process, the levels to which organisations are consulted about decisions, and the ability to give feedback (collectively referred to as the category: 'Access to policy'. The category): 'Coordinate services' refers to instances where organisations indicated the belief that government (broadly speaking) should more rigorously monitor the sector, to prevent 'fly-by-night organisations', mismanagement and duplication of services.

Table 26 What can be done to make environment more enabling?

	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Access to policy	9	10	7	18	11	13
Coordinate services	5	5	6	2	5	6
Funding	56	56	50	42	49	23
Funding and OD	6	7	0	4	8	15
No problems	6	4	9	10	5	0
OD	19	18	28	24	23	42
Total	100	100	100	100	100	100

The extent to which registration with the DSD as an NPO helps to access funds is disputed, though a substantial minority believe it is easier to get funds as a result of their registration as NPOs. At the same time, a clear majority believe that it is easier for a registered organisations





Table 27: Improved Access to funds (%)

	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops
Yes	47	46	49	35	50
No	43	44	46	51	44
Don't Know	10	10	5	14	6
Total	100	100	100	100	100

When asked whether the DSD in particular, and government in general are taking the needs of NPOs into consideration, responses were divided, with a slightly better opinion of the DSD than of government as a whole. The better resourced Sections 21 companies and Trusts are somewhat more positive than Voluntary Associations registered as NPOs. Unregistered Voluntary Associations also seem to generally believe in government/DSD regard for the needs of NPOs (which may explain why most of them plan to register or are in the process of doing so).

The mixed feelings about government attitudes may be related to the ability of organisations to influence or contribute to government policy on NPOs. While the majority of better-resourced organisations (Section 21 companies and Trusts, again) believe they do make a contribution to policy, Voluntary Associations registered, as NPOs and Cooperatives are less confident of their ability to do so.

Table 28: NPO needs taken into consideration (%)

NPOs needs taken into consideration by:	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
<i>DSD</i>						
Yes	43	42	52	59	41	65
No	43	44	31	25	48	25
Don't Know	14	14	17	16	11	10
Total	100	100	100	100	100	100
<i>Government</i>						
Yes	41	41	54	50	41	61
No	45	45	30	32	49	19
Don't Know	14	14	17	18	9	10
Total	100	100	100	100	100	100

Table 29: Perceptions on contribution to NPO policy (%)

Contribute to government policy on NPOs	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops
Very much	12	11	37	49	25
Somewhat	13	13	19	17	15
Neutral	8	8	6	6	11
Very little	8	8	7	2	11
Not at all	59	58	32	25	38
Total	100	100	100	100	100





The perception of contribution is directly related to the extent to which organisations have bothered to give feedback to DSD on policy and other matters relating to NPOs. The majority of Section 21 companies (51%) and Trusts (63%) have done this, while other types of organisations have not (only 25% of Voluntary Associations registered as NPOs have given feedback). Whether feedback was not given because of the perception that they cannot make a contribution, or the other way around, is not clear. When feedback was given, it was done primarily through letters written to DSD, at a DSD workshop, through a network or via affiliates, and by calling up DSD officials on the phone. With the DSD responding to several thousand queries, the response was largely of a technical nature, which the DSD has on a template system.

5.2 CBO Perceptions of an Enabling Environment

A number of CBOs⁴¹ were interviewed face-to-face in focus groups for the purpose of this study. Interviews took place in four different provinces i.e. Limpopo, KwaZulu-Natal, the Western Cape and the Eastern Cape. The spread of organisations included those who were involved in the areas of membership training/capacity building, working with youth, and research.

Some of the members in the discussion groups were involved in the initial consultation process out of which the NPO Act was developed⁴². As such, they felt that this study (NPO Act Impact Assessment) was a good chance to reflect on the advances made since the NPO Act was promulgated.

Most of the participants felt that the environment for civil society participation in the general development arena in South Africa has improved. They based their assessment on a few of factors, including that:

- A number of community-based organisations (CBOs) have increased since the introduction of the NPO Act.
- Some of the smaller community based organisations and structures have managed to graduate to a more organised and formalised status.

However an opposing view does exist that an enabling environment does not exist for civil society in South Africa. Although major inroads have been made towards providing a supportive legislative framework for voluntary and civil society organisations, and in particular through the promulgation of the NPO Act of 1997 and others such as the Lotteries Act and the NDA Act, the effects of these interventions remain a 'paper exercise' in the opinion of several provincially based NGOs and CBOs.

Reasons given for this opinion included:

- A perception of decreasing direct external and locally based donor support to the sector
- A number of NGOs are folding/closing down
- High turnover of staff from the sector to the public or private sector
- Lack of a clear role of the sector in the current development context

According to the focus group discussion, a major problem with the NPO Act and its implementing agency (i.e. the NPO Directorate) is that information about the NPO Act does not reach its intended beneficiaries. As such many smaller voluntary and civil society organisations do not reap the benefits associated with inclusion in a more formalised context.

⁴¹ Different definitions of CBOs are used in literature on the NPO sector. For the purposes of this assessment a CBO is referred to an organisation which brings together constituencies at a grassroots level to take action and make representation on issues of common interest. This definition therefore relates more to *locality and target group* than to actual size of the organisation.

⁴² An Independent study into an Enabling Environment for NGOs conducted by a team of NGOs and other experts led by the Development Resources Centre (DRC) in 1991.





According to one group interviewed, the fact that the Directorate is housed in the national Department of Social Development creates a bias towards organisations with a welfare orientation. It was argued that it is almost assumed that all organisations provide welfare services, whereas in reality the sector is much more diversified and complex.

CBOs in the focus group discussions however cautioned that a number of fundamental changes still need to happen before it can be safely and comfortably concluded that we have an enabling environment for civil society in South Africa. These will include:

- The conditions prior to the democratic dispensation were different and by implication so were the orientation and focus of progressive civil society, the current socio-political landscape thus fosters a different form of civil society.
- There is still a lot of dependency on government and foreign donor agencies and this stifles the independent nature of the sector
- There is a funding crisis in the CBO sector
- Most of the new organisations emerging at a community level still lack strategic planning and management skills, affecting their sustainability
- There is the perception of a certain level of 'silent' marginalisation of the sector by the current government, as if the sector is a threat to the hegemony of the current ruling elite
- Disorganisation within the sector, particularly at national leadership level was also stated as contributing factor to disabling environment

The difficulties with scarce funding and resources for the sector generally makes it difficult for civil society to function effectively in the development and political arena in this country.

5.3 Case Study One: Triple Registration and the Fundraising Act of 1978

Eight organisations with triple registration were identified from the datasets generated by the telesurvey. For the purposes of analysis three NPOs were interviewed to ascertain the reasons behind triple registration.

An interesting trend that emerged out of both the Telesurvey as well as the Cooperative/NPO Case Study and the Triple registration Case Study, is the idea that the fragmented regulatory environment governing NPOs in South Africa paradoxically contributes to an 'enabling environment' for organisations that are capacitated enough to take advantage of it.

For example, a large proportion of Coops who consider themselves NPOs, registered as such in order to *access funding from certain sources*. Other examples of double and even triple registration of organisations seem to indicate that there are organisations that use different legal entities interchangeably in order to access different things at different times. This trend represents an interesting adaptive response on the part of NPOs to survive in the current legislative and funding environment.

When asked about whether they think the current environment for NPOs is enabling, the organisations that were interviewed for the purposes of the Triple registration Case Study, felt that the environment is *enabling to those organisations that have the capacity to adapt to it*. One of the organisations indicated that the current NPO environment is very enabling, provided that there is a complementary responsibility on the part of organisations when it comes to maintaining good management and financial structures.

All three of these 'Triple registration' organisations felt that there is scope for increased cooperation between government and NPOs, and that government could be more involved in building the capacity





of organisations to become fully-fledged partners in community service delivery. Two of the organisations felt that there is a need to improve access to funding sources, mostly by way of building the capacity of the NPO sector. As discussed earlier, access to funding seems to be a recurring theme amongst organisations themselves, as indicated by the Case Studies as well as the Telesurvey. One of the organisations indicated that there should be more of a focus on improving the financial sustainability of organisations, as opposed to organisations being dependent on donor funding.

Interestingly, the organisations interviewed for the Fundraising Act Case Study (i.e. organisations that were previously registered in terms of the Fundraising Act, and which are now registered in terms of the NPO Act) felt that there is no difference in the environment for Non-profit Organisations since the NPO Act was passed. All of these organisations indicated that they previously complied with the Fundraising Act, and now they simply comply with the NPO Act, there is no fundamental difference between the two periods when it comes to access to funding, ease of registration or ease of complying with reporting standards. It should be noted however that this sample group represents organisations that are fairly well established (existing and established at least for the last seven or more years). The increasing numbers of registered organisations over the last six years is indication of the fact that the NPO Act does indeed provide more of an enabling environment to small, emergent, especially community based organisations (CBOs) than the previous Fundraising Act did.

A critical concept in this regard then relates to the capacity of organisations to become a part of the formalised regulatory environment, and their capacity to take advantage of the environment to their own benefit.

5.4 Donor Perceptions of the Enabling Environment

Interviews were conducted with a sample group of donor organisations to get a sense of their view of the NPO Act, the NPO Directorate and the enabling environment for NPOs in South Africa. In total, sixteen interviews took place under the following categories:

Table 30: List of donor interviews

Type of Donor	Name
Bilateral government agency	USAID
International Private Foundations	Ford Foundation C. S. Mott Foundation
SA government funding agencies	National Development Agency National Lottery Umsobomvo Youth Fund;
International NGO that provides funding	CARE
Local South African grantmaking organisations	Social Change Assistance Trust (SCAT), Western Cape Community Chest the Nelson Mandela Children's Fund WHEAT (Women's Hope, Education and Training Trust Foundation for Human Rights (FHR) Islamic Relief
Corporate Social Investment programmes	South African Breweries Anglo American Nedcor.

The selection of the organisations interviewed tended towards funding organisations that have had some involvement and interest in the enabling environment for NPOs.

The interviews focused around four main themes:

- Perceptions of the enabling environment for NPOs;





- NPO registration as a requirement for funding;
- Perceptions of the current role of the NPO Directorate; and,
- Recommendations for the future.

5.4.1 What is an Enabling Environment for NPOs?

According to these interviews, the majority of funding organisations working in South Africa believe that, generally, there is an enabling environment for NPOs.

The list below illustrates that there is a continuum between the kind of organisations that said "yes" there is an enabling environment and those that said "no" there isn't. The continuum runs from donors that were established by the South African government, which were most likely to say that there is an enabling environment to one subset of local South African grantmaking organisations (that work most directly with community based and grassroots organisations) that were most likely to say that there is not an enabling environment.

Table 31: Donor responses to the concept of an enabling environment

Type of Donor	Name of Donor	An enabling environment for NPOs in South Africa
Donor linked to Government	National Development Agency	Yes
	National Lottery	Yes
	Umsobomvu	Yes
CSI programmes	South African Breweries	Yes
	Anglo American	Yes
Local SA grantmakers	Nelson Mandela Children's Fund	Yes
	WHEAT	Yes
	Islamic Relief	Yes
	Foundation for Human Rights	Yes and no
Private Foundations	C. S. Mott Foundation	Yes
	Ford Foundation	Yes and no
Government agency International NGO that provides funding:	USAID	Yes and no
	CARE	No
	SCAT	No
Local SA grantmakers	Western Cape Community Chest	No

Those organisations that expressed appreciation for the current enabling environment in South Africa focused predominantly on the legal regulatory environment. For example, the Lotteries Board representative said that "with the NPO Directorate, there has been more opportunity to register and more opportunity for assistance to register." There was also commentary suggesting that the state does recognize the important role for NPOs. For example, the NDA representatives said that "there is a demonstration and political will on the part of government to support the existence of civil society organisations." The Mott Foundation representative added that compared to Zimbabwe, South Africa has a strong enabling environment and that there is "a real sense of commitment on the part of the state to an enabling environment. This is reflected in its commitment to NPOs and its commitment to partnerships." The WHEAT Trust added another point by saying that the SA government has supported an enabling environment by promoting the King II report and other initiatives that encourage corporates to give to NPOs and to "invest in their communities."

Ironically, the Corporate Social Investment (CSI) programme representatives that were interviewed agreed that there was an enabling environment, but tended to equate a strong enabling environment with an environment that is favourable to corporates themselves. For example, the representative from Anglo American stressed that the new tax regulations that provides incentives for CSI programmes to





give more to the non-profit sector, is what makes for an enabling environment. CSI programmes tended to see their own funding as contributing to the enabling environment, and equated incentives for more funding with more of an enabling environment. For example, the South African Breweries representative said that there is an enabling environment "purely because of the company's contribution to social funding. This funding has opened up avenues for NPOs." Interestingly, incentives for more funding/better access to funding was also cited as the most important element of an enabling environment by organisations included in the national Telesurvey.

In support of the idea of an enabling environment as one wherein government facilitates as opposed to controls, but from a different perspective, the Ford Foundation representative said that "there is a rich tapestry of NGOs on the ground that government is unable to control or regulate. This is good. It is like a thousand flowers blooming."

In contrast, there was a smaller group of funding organisations that suggested that South Africa does not have an enabling environment. These organisations tended to look beyond the regulatory environment to other factors affecting NPOs. For example, the representatives from CARE and SCAT appointed blame to the fact that NPOs are struggling to find necessary funding. SCAT suggested that while international donor funding is tightening up, "we haven't done enough work internally for there to be a culture of philanthropy."

Donor perspectives then seem to revolve around either the regulatory environment or the funding environment as components of an enabling environment. Those that focus on regulation feel that the environment is enabling, while those that focus on funding feel that it is not.

The Ford Foundation representative expressed concern about the lack of an enabling environment by stating that "there is no understanding on the part of government of what the Non-profit sector can represent. The government is oblivious to the heart of the poor. This is a serious indictment. They do not validate people's responses to their everyday life situation."

While the USAID representative commented primarily on the regulatory framework, and said that there were laws in place to provide an enabling environment, she added that "the application of these laws is causing roadblocks and the access is cumbersome, so the laws are of no use."

5.4.2 Funding Organisations and NPO Registration

It is significant to note that the majority (twelve out of sixteen) of the funding organisations interviewed do not require NPO registration in order to fund an organisation. Certain funding organisations that were established by the South African government (NDA and Umsobomvu) were most likely to require NPO registration, but the National Lottery is an exception in that it doesn't require NPO registration for funding. Again, the six local South African grantmakers were split (although not along the same lines as with their views on the enabling environment above). Only two out of the six require NPO registration for funding. The following list provides the illustrative breakdown:



**Table 32: Funders Requiring NPO registration**

Type of Funder	Name of Funder	Requirement
Funders linked to government	NDA	Do Require
	Umsobomvu	Do Require
	National Lottery	Do Not Require
CSI Programmes:	SAB	Do Not Require
	Nedcor	Do Not Require
	Anglo	Do Not Require
Private Foundations	Ford Foundation	Do Not Require
	C.S. Mott Foundation	Do Not Require
Bilateral government agency:	USAID	Do Not Require
International NGO that provides funding:	CARE	Do Not Require
One set of local SA grantmakers:	WHEAT	Do Not Require
	SCAT	Do Not Require
	Islamic Relief	Do Not Require
	Foundation for Human Rights	Do Not Require

5.4.3 Impact on donor funding practice

The fact that most funding organisations do not require NPO registration is one illustration of that the fact that the NPO Act has had limited impact on the procedures required by funders. In addition, it doesn't appear that there has been much impact on grantmaking patterns either. When funding organisations were asked 'does the NPO Act impact on your work and the programmes that you support?' answers were consistently weak. Bolstering this conclusion further is the response from the Southern African Grantmakers Association (SAGA): "The NPO Act doesn't seem to have made much difference in terms of how CSI and other kinds of donors allocate their resources."

5.5 The NPO Directorate in promoting an enabling environment

In order to assess the impact that the NPO Directorate has had on promoting an enabling environment for the NPO sector, clarity should be established as to what the role of this Directorate is, its approach to implementing the Act, its relationship with other government departments in fulfilling the responsibility of promoting the NPO Act as well as the relationship that the NPO Directorate has with organisations in the NPO Sector.

5.5.1 The Role of the NPO Directorate

The NPO Act sets out the core functions of the NPO Directorate in Chapter 2, Section 5 being:

In addition to any other function determined by the Minister or specified elsewhere in this Act, the Directorate is responsible for-

- (a) facilitating the process for developing and implementing policy;
- (b) determining and implementing programs, including programs-
 - (i) to support nonprofit organisations in their endeavour to register; and
 - (ii) to ensure that the standard of governance within nonprofit organisations is maintained and improved;
- (c) liaising with other organs of state and interested parties; and
- (d) facilitating the development and implementation of multi-sectoral and multi-disciplinary programs.

Further functions and responsibilities are outlined for the Directorate throughout the Act. This report





examines the different functions of the Directorate in relation to the specific objectives of the Act. In looking at the theme of the enabling environment, it is important to consider the range of functions played by the Directorate, which in total relate to their role to support an enabling environment. Some of these functions are referenced again under specific themes.

By far the most demanding of the functions prescribed by the Act is the registration of NPOs. To date the following number of certificates has been issued:

Table 33: NPO Certification

Dates	Number of registered NPOs	Number of New Applications received	Number of deregistered NPOs
1 st September 1998 - 31 st March 1999	223	937	-
1 st April 1999 - 31 st March 2000	1205	3005	3
1 st April 2000 - 31 st March 2001	3213	5380	3
1 April 2001 - 31 st March 2002	4713	4966	281
1 st April 2002 - 31 st March 2003	6550	10170	641
1 st April 2003 - 31 st March 2004	7398	8840	356

Source: NPO Directorate, 2004

The gradual increase in registered NPOs over 5 years reflects the increase in awareness of NPOs to register as well as an increase in the capacity of the Directorate to administer the registration process. One can speculate as to why the amount of new registrations suddenly increases in the period 1 April 2003 - 31 March 2003. It is possible that the registration procedures for tax exemption with the South African Revenue Services (SARS) had an influence on these figures.

The process of registering NPOs is seen as a means towards the end of creating an enabling environment. Many staff members of the Directorate see the registration process as only a part of creating an enabling environment and argue that the Directorate has to design activities *beyond registration and monitoring*. Many staff members recognize their 'constituency' as that of emerging community-based voluntary associations, grass roots organisations and local groupings. Given that the bulk of the applications are received from these types of organisations, the staff members argue that much more needs to be done to assist with registration, strengthening of governance structures and improvement of the financial sustainability of organisations. It is the opinion of staff members that the capacity building activities of the Directorate needs to be expanded.

The NPO Directorate is situated within the national Department of Social Development. The budget for the Directorate (it is not a priority area), is allocated as part of the total DSD budget. Within this budget, the NPO Directorate has to allocate money for programmatic work, particularly for awareness-raising and capacity building. Given the severe resource limitations experienced year after year, the NPO Directorate is considering partnerships (with some of the SETA's, for example) as the only viable way to improve their reach and efficiency.

The Directorate implements its activities as far as possible according to the NPO Act. It should be noted however, that the Directorate's leadership is involved in other work areas, as specified by their reports and business plans. Firstly, there is involvement in the promotion of volunteer work by participating in various forums. Secondly, there has been participation in two 'Presidential Projects' along with other Directorates within the Department of Social Development.





In its business plan, the NPO Directorate has four key output areas:

- Register organisations;
- Monitor compliance and update register for non-compliance;
- Provide support telephonically, face to face and through correspondence;
- Contribute to transformation of funding and monitoring of Non-profit Organisations.

Currently, by far the greatest amount of work done by the Directorate relates to registration of organisations. Other responsibilities which are pertinent to the Act, such as capacity building of organisations, takes staff members out of the office leading to an increase in the backlog of registrations. The monitoring of organisations also suffers under the administrative burden. It is hoped that the problem of these backlogs can be resolved, and that the Directorate can then play a bigger role in the promotion of an enabling environment for NPOs. Whilst the Directorate endeavours to follow the Act precisely, it is struggling with the timeframes that are set out by the Act. The Directorate has not received additional resources to deal with the increase in numbers of applications, which have been significant in the last four years.

5.5.2 Approach of the NPO Directorate

The role of the NPO Directorate in the promotion of an enabling environment has been debated and is questioned continuously by staff members themselves.

The general approach of the Directorate towards the Act, stresses the importance of facilitating an 'enabling environment', as opposed to controlling the non-profit sector as was the case with the Fundraising Act of 1978. The Directorate also sees the registration process as a means towards this end, primarily by ways of giving small, emergent especially community based organisations access to the formalised regulatory environment and the benefits that this is supposed to imply.

The model constitution developed by the Directorate, stipulates minimum standards of good governance, such as the form of governing structures for an organisation, as well as requirements for the keeping of financial (and other) records, procedures for reporting to the Directorate and procedures for the dissolution of the organisation. These basic standards are very similar (but less complex) to those requirements expected of Section 21 companies, as specified in the founding documents of such an organisation (i.e. Memorandum and Articles of Association). The distribution of such a model document should promote the levels of accountability of NPOs, by virtue of the fact that it makes these general standards accessible to smaller, less capacitated organisations.

The Directorate has furthermore developed documents about codes of good practice for Non-profit Organisations, which provides useful guidelines for the day to day running of a non-profit organisation. The NPO Directorate associates itself with various campaigns that support the NPO sector, for example, support and involvement with the International Year of Volunteers campaign in 2001. The Minister of Social Development, Honourable Mr. Zola Skweyiya was nominated as the patron for this campaign.

The Directorate was also involved in developing a concept paper on Public Private Partnerships (PPP), in line with building best practice models for service-delivery relationships. between government and the NGO (more on this issue in Section 9 of this report).

In addition to the registration process, the NPO Directorate has contributed to an enabling environment through direct interventions by ways of capacity building workshops, often in conjunction with other organisations and institutions involved in the sector. These workshops have focused on the registration process and the reporting requirements. In the face of capacity and budget limitations, the Directorate acknowledges that creative approaches and/or outsourcing of certain functions with





regards to capacity building is probably the most viable way of overcoming some of these constraints in the short term.

Since poor standards of financial and narrative reporting by organisations is a trend that is confirmed by the national Telesurvey of NPOs, it is generally assumed that poor financial reporting on the part of NPOs is a function of poor financial practices. This is a concern for the Directorate, especially since registration with the Directorate is at least partly meant to improve the legitimacy of the NPO sector in (especially) the eyes of donor/funding institutions and organisations.

Partnering with SETA's in this regard is an avenue that should be investigated, as many organisations fall under the Services SETA, Welfare and Health SETA (HWSeta) and Education Training and Development Practice SETA (ETDPSeta). Further partnership processes with key actors in the various development sectors should be considered, especially with some of the larger networks and institutions active within the NPO sector, especially since many of these already engage in the same type of training activities.

Some staff members of the Directorate argue that it is precisely the registration and certification function that should be outsourced, giving the Directorate the opportunity to focus on governance training and support to NPOs involved in their communities. Involvement in the training of organisations when it comes to financial sustainability and reporting, could therefore be a key focus area for the Directorate.

5.5.3 Challenges of Implementing the NPO Act

The Act does not specify what the NPO Directorate is supposed to do if there is misappropriation or mismanagement of funds within organisations. The tension between strengthening organisations versus controlling them is therefore raised, as the Act does not allow for an inspectorate. The general idea is also to move away from controlling, as was done by the Fundraising Act of 1978. Non-compliance with the constitution and non-compliance with report submission is dealt with in the Act in S21, S22 and S23.

NPO Directorate staff members indicated that they envisioned their role as one wherein they help organisations with the requirements to become and to stay registered, as opposed to policing them. Furthermore, it is believed that the promotion of the financial sustainability of organisations is an issue worth engaging with if registration as a NPO is to be worth anything.

The reporting requirements as stipulated in S17, S18 and S19 of the Act are particularly difficult for many (especially the smaller, less capacitated organisations) NPOs to comply with. The Act expects NPOs to cover the cost of financial reporting, whether it relates to proper auditing of statements or merely certification by an accounting officer. This requirement does not take into account that many organisations operate with little or no money resources. The national Telesurvey further indicated that many organisations do not have financial records at all (23% of the Voluntary Associations registered as NPOs surveyed who had indicated their failure to submit reports, said that they had not submitted because they do not have an records).

In this regard, mention can be made of the Case Study that was done of organisations that de-register voluntarily. Here a case was noted wherein an organisation de-registered in order to do away with the financial and administrative burden of complying with reporting standards. It was indicated by this organisation that they simply could not afford to have audited financial statements prepared, and therefore decided to do away with the responsibility. It should be noted however that this organisation did not depend on outside funding sources, and would therefore not benefit from registration when it comes to applying for funding (Refer to Voluntary De-registration Case Study, section 7.5.2 of this





report). It has been noted that the NPO Directorate accepts an affidavit from organizations that have no real money flows to report upon, along with bank statements in lieu of audited statements or records attested to by an accounting officer. This provision seems to be generally not known among organisations. The organisation in the case study mentioned above could undoubtedly have benefited from this knowledge.

5.5.4 CBO Focus Group Perceptions of the Role of the NPO Directorate

In the CBO Focus Group discussion, it was conceded that whilst the NPO Act has been very helpful in providing a platform for CBOs to improve their internal governance structures, the NPO Directorate itself has not necessarily succeeded in disseminating information about the NPO Act within the sector. In addition:

- Communication between the NPO Directorate and smaller organisations is not optimal.
- Communication between different government departments regarding the NPO Act itself was not evident.
- There is little coherence between different pieces of legislation governing Civil Society Organisations, as well as funding requirements and so forth.
- The positioning, political significance and level of authority of the NPO Directorate within the Department of Social Development as a whole, is seen as contributing to the almost invisible nature of the Directorate.

Organisations in the CBO Focus Group discussion argued that the Directorate focused mainly on administrative duties (i.e. processing of application forms), as opposed to its regulatory/monitoring role wherein they are meant to oversee the general functioning and performance of the sector. Furthermore, the Directorate is meant to represent the NPO sector in the funding environment, and should monitor funding and resource mobilisations trends.

Some organisations felt that they were 'unofficial agents' of the Directorate, because they are often expected to assist other organisations in understanding and applying for NPO registration. It may be useful for the Directorate to explore possible strategies of engagement with such intermediary organisations.

A lot of information is required from organisations by the NPO Directorate, both when they apply for registration and in the process of complying with reporting standards. It is felt that none of this information is put to good use beyond the normal information updating of the Directorate. Such information could be applied very usefully as an important and authoritative information resource, for NPOs themselves, funders/donors, other government departments and organisations/institutions active in the sector.

Apart from the NPO tax regulations, organisations felt frustrated with the little benefit they see from their almost religious compliance with the NPO Act. The information gathering that is done by the Directorate was said to be a 'one directional' exercise, wherein the NPO sector is expected to feed information into a vacuum with no meaningful feedback beyond acknowledgement of receipt of documents

It was further stated that the Directorate does not have a physical presence in communities and therefore cannot assist organisations in need. A few organisations mentioned that they encounter questions and challenges of registration among their members and clients. One organisation stated that they included NPO registration as part of their own training package to CBOs and that most of their clients found this particular section of the training most useful.





This group felt that government regulation is not necessarily undesirable, as long as government is kept in check. Government should not overstep its regulatory boundaries and start controlling the direction and activities of the sector as the Fundraising Act did or sought to do. The Constitution was referred to as a mitigating tool against government policing and controlling of the sector. It was also mentioned that the sector itself has the responsibility to guard against government control.

5.5.5 Impact on smaller Community Based Voluntary Associations

The NPO Act was also perceived as providing a much-needed boost to the sector, especially when it comes to shaping the growth of small emergent organisations. A few reasons were stated in the focus group discussion:

- Smaller, emergent organisations felt it was much easier to access the formalised regulatory environment by way of the NPO Act than by way of the previous Fundraising Act, 1978.
- The minimum requirements set for registration are generally accommodative to smaller organisations in that you don't have to necessarily be urban based or technologically advanced to get access to as well as complying with the requirements of the Act.
- The NPO Act at least provides a more tangible and significant legal identity for smaller organisations and this encourages them to formalise and be more accountable. This idea is echoed in the unregistered Voluntary Associations dataset produced by the Telesurvey. Most unregistered organisations planned on registering as NPOs with DSD because it would help them to access funding, for instance.
- The required submission of narrative and financial reports by the NPO Directorate also leads to more accountability and organisation within the sector.

5.5.6 Recommendations

A number of recommendations were made regarding the functioning and role of the NPO Directorate as well as within the provision of the Act itself in creating a more enabling environment for civil society. It was particularly emphasised that the Directorate will need to focus more strongly on capacity building and general organisational strengthening of the sector, as opposed to its administrative function. Other recommendations were as follows:

- The Directorate needs to seriously revise its communication strategy with the sector, especially at provincial level.
- The Directorate must consider decentralising its services and functions (locate services at grass-root/local level).
- Performance standards within the sector need to be continuously monitored and evaluated by the Directorate.
- The Directorate must provide institutional and organisational support to smaller organisations.
- The Directorate can use existing government facilities and resources to distribute information to the sector (particularly government service delivery agencies at local government level) that engage with the sector. Partnering with network-based organisations such as the provincial NGO Coalitions would be beneficial.
- The Directorate needs to start engaging with municipalities around the latter's functionary and obligatory requirements regarding CSOs.
- There must be a revision of the language used in the application process, and due consideration must be given to: 1) the level of technicality within the forms and, 2) indigenous languages.





6. OBJECTIVE 2: ADMINISTRATIVE AND REGULATORY FRAMEWORK

This section addresses Chapter 1, Section 2(a) of the Act, which relate to "the establishment of an administrative and regulatory framework within which nonprofit organisations can conduct their affairs". The indicators used in this impact assessment are as follows.

Theme Indicator: Establishing an administrative and regulatory framework within which NPOs can conduct their affairs

SPECIFIC INDICATORS TO MEASURE PROGRESS OF THE ACT	DEFINITION OF THESE INDICATORS
1. NPO Directorate institutional systems and capacity	Measures the efficiency? Effectiveness? Functionality? Of the internal operations, capacity in terms of numbers and financial commitment and structure of administration
2. Level of satisfaction with the current regulatory framework	This measures the NPOs satisfaction with the current regulatory framework and engagement with the NPO Directorate.
3. Opportunities not yet explored to expand regulatory framework	This indicator will measure viable options to broaden or deepen the current regulatory framework of the Act.
4. Implications of regulatory framework on NPOs	This indicator looks at the context of 'regulations' the NPO finds itself in.
5. Extent and structure of inter-governmental relations	This indicator measures the current intergovernmental relations to coordinate the regularity framework.

6.1 NPO Act, 1997 Overview

The President enacted the NPO Act on 29th November 1997, setting in place a voluntary registration process for organisations. The NPO Directorate draws its mandate from the NPO Act. Through this mandate the Directorate is expected to register organisations within two months, and to provide support for organisations to register and to meet reporting requirements. The Directorate must further receive financial and narrative reports. Organisations that fail to comply must be notified and given thirty days to meet the requirements. Failure to submit reports will lead to deregistration.

The Directorate in its business plan has five key outputs:

- Register organisations;
- Monitor compliance and update register for non-compliance;
- Provide support telephonically, face to face and through correspondence;
- Mobilise volunteers; and
- Contribute to transformation of funding and monitoring of Non-profit Organisations.

The implementation of the Act was met with great enthusiasm of the Minister, as reported in the 1997/8 Annual Report.

"Strengthening our partnership with the NGO sector through creating an enabling environment in which the restrictions of the past have been removed. The Not for Profit Organisations Act signed into law by President Mandela on 29 November 1997, seeks to create conditions for such organisation to flourish. The Act promotes voluntary registration representing a fundamental shift from government control"(page 2).





Further in the Annual Report it is indicated:

"The Not-for-Profit Organisations (NPO) Act 1997, which will come into operation during July 1998, replaces parts of the Fundraising Act, 1978. The NPO Act lays the foundation for a strong NPO sector and will build a constructive relationship between the government and the sector. The Act creates an enabling environment for Non-profit Organisations by promoting voluntary registration, which represents a fundamental shift from government control and interventions to a climate of freedom and voluntary association" (page 8).

"The department has successfully honoured its commitment to the non-profit sector to administer applications under the Fundraising Act, more efficiently and more user friendly manner than in the past. The backlog of applications has been addressed and the applications dating as far back as 1994 have been processed. The transformation of work processes and staff remain a major challenge"(ibid.).

During the initial phase of the NPO Act enactment and the Directorates implementation of it, most of the activities were around the registration process.

6.2 NPO Registration - different regulatory bodies

Non-profit Organisations can choose the type of registration that is appropriate to the size and intention of the organisation. A summary overview of the implications of legislation as it pertains to Non-profit organisations is illustrated in *Appendix 3*.

The choice of registration depends on what is the best fit for the organisation in terms of intent, capacity and size. A challenge is the lack of coordination between the various registering authorities. At the time of this impact assessment, the formation of an *intergovernmental task team* was set up, and SARS and the NPO Directorate are participating in it. The DTI and the Master of the High Court have been invited. The aim is to harmonise the fragmented NPO and Public Benefit sector. Such a task team will also consider centralising the registration process for non-profits. The aim is to incorporate the various acts without merging them, keeping the independence of each Directorate/department. It also aims to eliminate duplications in registration in order to reduce the amount of time and money that is spent by applicants on registration. The intergovernmental task team aims to develop a concept paper to guide the process. Currently there is a *referral partnership* between Cooperative registration and the NPO registration. They each refer parties to the appropriate registration body.

Voluntary Association: A Voluntary Association is set up in terms of Common Law, where usually a minimum of three people can come together with common 'public interest' intent. They can or cannot have a written constitution, i.e. their association can be based on a verbal agreement. The members of the Voluntary Association must adopt the principles of the organisation. They do not need to appoint an accounting officer or auditor. This form of organisation is considered a legal entity.

Section 21: The Section 21 (S21) company is set up in terms of the Companies Act of 1973. At least seven people are needed in order to form a Section 21 company. Of these members at least two need to be appointed as Directors. As a legal entity, with a reserved name, the intent or objectives must be articulated in a Memorandum and Articles of Association. The Section 21 company must also appoint an auditor. This entity is registered with the registrar of companies within the Department of Trade and Industry.

The entire Company's Act was under Assessment during the time this impact assessment was undertaken. In regard to Section 21s, the intention will be to have a cost simplification. Also there is a process that is looking at a model Memorandum of Association and Articles of Association appropriate





for the non-profit sector. The intention is to have the procedures for registering and maintaining a Section 21 company made more affordable and easier to comply with (current, the requirements for a Section 21 company is the same as for a (profit-making) company with share capital). Under Assessment is whether an audited process is completely necessary and if there is a simplified and cheaper process that Non-profit Organisations can comply with. The idea is to arrive at some standard that will be appropriate for public interest companies that are not involved in profit-making enterprises.

The Company Law Assessment makes specific mention of companies established not for gain, indicating that they too need to undergo reform, where application and compliance need not be such a burden:

"The Company's Act 1973 makes provision for the establishment of an association not for gain commonly described as a section 21 company. It is estimated that there are approximately 11000 section 21 companies registered in South Africa. These types of companies are not established with a share capital, given the nature of their objectives and work. And yet, they are faced with the same administrative and financial burden as a company with share capital.

It is therefore necessary for specific provision to be made for the non-profit companies when reforming the Companies Act to ensure that these types of companies are not faced with the same requirements regarding share capacity, but still comply with principles of sound governance, accountability and the protection of creditors. In a similar vein, thought should be given to the treatment of commercial cooperatives, or rather cooperatives that are established a business entities. However, any provisions in company law in this regard would have to be consistent with the non-profit organisation Act and any Cooperative legislation." (2004: page 18: South African Company Law for 21st Century: Guidelines for Corporate Law Reform: DTI)

The Company Law Review also proposes separation between Companies that provide provisions for charitable causes, and companies that are set up for non-profit purposes:

"This framework policy document further acknowledges that not all companies are set up for standard business purposes. For example, there are charitable companies special purposes ones, such as those owning the assets of clubs or societies. It is proposed that in the context of South Africa, charitable and related not-for-profit companies should be run for the purposes of achieving any charitable or not-for-profit objects identifies." (2004: 27: South African Company Law for 21st Century: Guidelines for Corporate Law Reform)

The Companies Act has undergone an initial stage of national consultation, through a road show conducted around the country to seek comment from stakeholders. This will be drawn into a paper outlining key findings. The NPO Directorate did not participate in this process, although there was a representative from the DSD.

Non-profit Trusts: The Trust Property Control Act of 1988 makes it possible for organisations to register a Trust with the Master of the Court office in their district, governed by the Department of Justice. This Act places no limit on the amount of trustees in the organisation, but generally there are between three and twelve trustees. Members of the Trust do not necessarily have to be 'natural persons'.

A Trust (not all Trusts are Non-profit Organisations) is governed by a Trust Deed, which along with the Act and the Common Law lays down the guidelines and rules of operation for the organisation. There is supervision over the appointment of trustees, but not really over their activities, in other words, the Master requires to be notified of changes in the structure of the organisation, but not of much else. Rules over trading and dissolution of the organisation are specified by its own Trust Deed, but generally follows a particular format in the case of Non-profit Trusts (similar to the standards for a Voluntary Association or Section 21 company).





The Trust Deed is the key founding document. The organisation has to elect at least one trustee. Beneficiaries of the Trust need to be clearly stated. Also the Founder/s needs to be clearly stated. The Master of the Supreme Court approves the Trust and provides the organisation with a reference number. A Letter of Authority is given to formalise the Trust and to provide the necessary authority to the Trustees to act on behalf of the Trust. The Trust may appoint an auditor or give security to the Master of the Supreme Court.

Non-profit Organisations: The NPO Act of 1997 provided a facility for voluntary registration by Non-profit Organisations. The Act also repealed much of the Fundraising Act of 1978 that had been used by the apartheid state to constrain the activities of oppositional NPOs. As the Legal Resources Centre states, "the Act adopts a 'carrot' rather than a 'stick' approach to public accountability in that the improved standard of governance and increased accountability and transparency which voluntary registration is intended to promote, will both increase public and donor confidence in NPOs and encourage organisations to register. Experience is yet to prove whether voluntary registration is an appropriate strategy for achieving the objectives of the Act."⁴³

The bulk of the organisations registered as NPOs tend to be smaller community-based organisations, in contrast to larger organisations that have more extensive networks and resources, and which are likely to be registered as Section 21 companies in terms of the Companies Act of 1973 or as Trusts in terms of the Trust Property Control Act of 1988.

NPO registration in many ways adopts a middle path between the organisational form of a voluntary association and a Section 21 company. There is some confusion emanating from the wording of the NPO Act as to whether a new legal entity is created through registration with DSD. In this study registration with DSD as a NPO is mostly discussed in terms of the *perceived benefit* (both from donors and organisations themselves). Registration in terms of the NPO Act has similar requirements to what common law requires for the formation of a Voluntary Association. However, a Voluntary Association which is registered as a NPO with DSD is *perceived* (by the organisation itself, especially in terms of what is generally believed to be required by funders) to be *more formalised*, with a *responsibility to comply with the NPO Act* (Section 16(1) of the Act, requirements for registration as well as Section 18(1), reporting requirements)⁴⁴.

An unregistered Voluntary Association is governed by common law and a constitution/founding document that can refer to a verbal agreement, not necessarily written⁴⁵. The perception therefore is often (especially among organisations surveyed in this study) that registration as a NPO with DSD is in fact 'more' of a legal entity than an unregistered Voluntary Association, increasing the organisations' chances of gaining access to funding. Registration as a NPO does not create a new legal entity (although this certainly seems to be the perception among organisations in the study), it formalises an entity in order to make it more recognisable and legitimate.

There is no limit to the amount of members that can be part of a NPO, with the organisation being governed by a written constitution as founding document. Organisations registered as NPOs with DSD are required to submit financial statements (either audited statements or a declaration by an accounting officer) and narrative reports to the NPO Directorate annually.

There was little communication between these different regulatory bodies during policy formation processes, and they continue to consult and communicate with each other minimally. NPOs must at times go through a minimum of two or three different registration processes before any benefits to that organisation can be realised. There is little cooperation or links between these regulatory processes,

⁴³Mary Honey, Guide to the Non-profit Organisations (NPO) Act (Legal Resources Centre, 2001).

⁴⁴Mary Honey, 2001, Legal Structures commonly used by nonprofit organisations, Cape Town, LRC.

⁴⁵Ibid





and organisations often have to produce/adapt documentation required by each. Several key stakeholders pointed towards the duplication of some of the requirements of the different regulatory bodies. Organisations experienced the adjustment of founding documents where the regulation requirements differed as being onerous.

6.3 Awareness of and engagement with the NPO Act by different types of organisations

Levels of awareness of the NPO Act vary between types of organisations. Surprisingly, Voluntary Associations registered as NPOs with the DSD in terms of the NPO Act did not necessarily express awareness of it. Section 21 companies and Trusts expressed the highest level of awareness of the NPO Act. They were followed by Voluntary Associations registered as NPOs, then by Cooperatives and then unregistered Voluntary Associations showing the least awareness. These findings provide direct correlation with the extent of professionalism and organisational capacity generally apparent amongst different types of organisational forms, as discussed previously in this report.

Table 34: Awareness of NPO Act (%)

	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Yes	59	59	75	84	29	47
No	41	41	25	16	71	53

Among those who are aware of the Act and have seen it, understanding its objectives was highest among the more professional/formalised organisations and vice versa, thus showing a consistent pattern as above. The disturbing finding here is that only 58% of Voluntary Associations registered as NPOs that are aware of the Act understand its objectives.

Looking at it from a slightly different angle, of alregistered as NPOs in the sample drawn from the DSD database, (41%) either are not aware of the Act, or have never seen it, and if they have seen it, they understand it to a very limited extent or not at all. This means that a lot more needs to be done in order to disseminate information and educate organisations about the NPO Act.

Table 35: Understanding of the NPO Act (%)

	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops	Un-registered VAs
Very Well	29	29	54	64	9	29
Somewhat	29	29	29	19	26	17
Neutral	14	13	2	5	9	4
Very little	16	17	7	10	35	37
Not at all	12	12	7	2	22	12
Total	100	100	100	100	100	100

Organisations aware of the NPO Act found out about it primarily at a network or forum meeting (a third of Voluntary Associations registered as NPOs and 36% of unregistered Voluntary Associations cited this source). The DSD itself and other NPOs were a source for many other organisations (about 10% mentioned some variation on DSD). SARS was mentioned as well by a large number of organisations (19% of Trusts, 17% of Section 21 companies and Cooperatives, but only 7% of Voluntary Associations registered as NPOs). Other means of information were newsletters and newspaper advertisements. Only





a minority of organisations attended a workshop on the Act: 18% of Voluntary Associations registered as NPOs and 25% of Voluntary Associations, but few of the other types of organisation.

6.4 Applying for Registration as a NPO: Experiences with the NPO Directorate

The majority of Voluntary Associations registered as NPOs completed the registration forms and required documentation on their own (61%), while the more professional organisations used accountants or lawyers to a much greater extent. That was the case for 42% of Section 21 companies and 68% of Trusts, but only 8% of Voluntary Associations registered as NPOs. Ironically those who have greater capacity to do it themselves used professional assistance, because they wanted to ensure it was done correctly. Other organisations may have wanted to do the same but probably could not afford it. The DSD provided help with the registration to 23% of Cooperatives and 14% of Voluntary Associations registered as NPOs, but only 9% of Section 21 companies and 4% of Trusts.

Most organisations found it easy to get hold of the registration forms (79% of Voluntary Associations registered as NPOs reported it was easy or very easy), with only 19% who found it difficult or very difficult.

In filling out the forms, a fairly high proportion of Voluntary Associations registered as NPOs (57%) accessed model documents (constitution, codes for good practice, and so on) available through the Department of Social Development and on its website. This was the case also for 59% of the Section 21 companies, 73% of the Trusts and 40% of the Cooperatives that were also registered as NPOs. Of those who accessed such documents, most found them useful (84% of Voluntary Associations registered NPOs, 79% of Section 21 companies, 79% of Trusts and 92% of Cooperatives).

The response time of the NPO Directorate to the application, and the time it took organisations to complete the registration process, varied between organisations. On average, it took a little over three months to get a response and just over four months to complete the process.

Table 36: Response time by NPO Directorate: Voluntary Associations registered with DSD

Time taken	Response from Directorate	Completion of registration
Less than 2 months	35	15
2 - 4 months	33	35
4 - 6 months	18	23
Over 6 months	14	26
Total	100	100

Most organisations were successful in their application the first time they submitted it, particularly Section 21 companies and Trusts (94%) and to a lesser extent Voluntary Associations registered as NPOs (77%). The use of accountants and lawyers to complete the forms clearly has its benefits. In most cases that required another revised submission, the DSD assisted in making the required corrections (82% of Voluntary Associations registered as NPOs who had to re-submit their applications reported such help). The DSD was regarded as useful also by 91% of unregistered Voluntary Associations that tried to get information from the Department regarding registration.

6.5 Incentives for Registration

Most Voluntary Associations registered as NPOs have registered with the DSD recently. Only a quarter (26%) of the organisations registered in the first three years after the NPO Act was passed (1998-2000), but the rate accelerated after that: 17% registered in 2001, 27% in 2002 and 28% in 2003. Most unregistered Voluntary Associations interviewed in this study are planning to register with the





DSD (94%), and a majority have started the process already (58%).

Related to the above-mentioned trend, unregistered Voluntary Associations, when asked why they would want to register, cited the ability to apply for funding (53%) as the biggest incentive, an additional 14% cited other funding related reasons (donors required it, they would be eligible for tax exemption). Two-thirds of unregistered Voluntary Associations thus link registration with financial considerations. Another quarter (25%) of unregistered Voluntary Associations that plan to register thought it was compulsory. An overwhelming 94% of unregistered Voluntary Associations indicated that they believe they will access funding (mostly from government) once they are registered with one of the regulatory bodies.

The largest proportion of unregistered Voluntary Associations that indicated their intention to register a legal entity with one of the regulatory bodies, wanted to register as a NPO with DSD (78%). A further 8% wanted to register as Section 21 companies, 6% as Trusts and 2% as Cooperatives. 6% of unregistered Voluntary Associations indicated that they were not planning on registering a legal entity any time soon.

As mentioned before, most unregistered Voluntary Associations (94%) intend to register a legal entity, with 54% of them already in the process of doing so. Of the organisations in this sample group who are either not planning on registering or are simply not in the process of registering indicated that they are not registered anywhere primarily because it is too complicated (12%) or that they did not know they could register a legal entity (8%).

Approximately 33% of Section 21 companies are not registered as NPOs with DSD. Of those not registered with DSD, the largest proportion (44%) indicated that they did not think they would benefit from the NPO registration, and therefore are not trying to register with the NPO Directorate. The second largest proportion of Section 21s not registered as NPOs (17%) did not know they could register as NPOs with DSD.

6.6 Registration of Legal Entities - Some Contested Issues

The DTI feels strongly that the incorporation of a business entity / corporation is the responsibility of the DTI. They raised issues of poor consultation between the two Departments (i.e. DSD and DTI) during the formation process of the NPO Bill. The opinion was expressed that, at that point, the legislation could have been rationalised to avoid loopholes.

The Company Law Review also proposes a new institutional framework consisting of a Companies' and Intellectual Property Commission, a Companies Tribunal, an Arbitration Council and an Advisory Panel. This body will have the mandate to

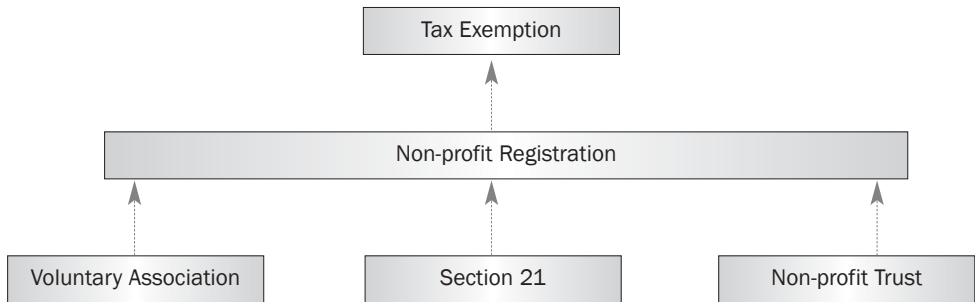
"encourage company formation and accountability through efficient and effective service delivery and through creating greater transparency in the market place. This mandate will be met through the efficient registration of companies, education and awareness raising, dissemination of information and [monitoring and] enforcement of company law."

Finally it will resolve issues of poor governance and management by providing tribunal rulings on cases brought forward and institutions / companies who do not comply. (South African Company Law for 21st Century: Guidelines for Corporate Law Reform: 2004: 44)





Figure 2: Steps to be taken to apply for tax exemption



The DTI argues that registration as a NPO with DSD does not form a new legal entity, and that registration with DSD merely represents a step that must be taken in order to register for tax exemption with SARS, as illustrated by the diagram above. If this is the case, then all non-profit entities must be compelled to register with DSD.

This argument cannot however explain the extent to which organisations have been registering with DSD as NPOs, and it certainly seems as if many of these organisations (especially smaller, less capacitated organisations) regard NPO registration as the most viable way to form a legal identity that is recognised by other institutions in the sector.

6.6.1 Case Study: Cooperatives registered as NPOs

Related to the above, the registration of Cooperatives as NPOs (indicated by the Cooperative survey) is highly contested phenomenon. A Cooperative technically cannot be a non-profit organisation, primarily because a Coop can distribute profit amongst its members. Procedures for dissolution also differ for a Coop.

This trend could be indicative of a certain amount of confusion within the sector when it comes to appropriate organisational forms/legal entities. For example, it seems likely that many organisations that engage in 'economic development' and 'income generation' would be more appropriately defined as Cooperatives than as NPOs. Conversely, an organisation such as the one contacted for the Coop/NPO case study could more appropriately be defined as a NPO, because it does not make a profit, provides Home Based Care services, and pays stipends (as opposed to dividends) to its care-givers.

Through the Telesurvey of NPOs a significant percentage of NPOs registered on the DSD NPO database defined themselves as Cooperatives (2%). It was decided to investigate this matter further by doing a survey amongst Cooperatives accessed from the National Cooperative Association's database, as well as by doing a Case Study of a Cooperative that is also registered as a NPO.

The Cooperative Telesurvey conducted in this Impact Assessment amongst a sample of 100 (of which 98 interviews were usable) Cooperatives indicated the trend discussed above: 66% of the organisations contacted consider themselves to be Non-profit Organisations; 42% of these (i.e. 30% of the entire sample of 100) are registered as such with DSD. 44% of Cooperatives that are also registered as NPOs, indicated that they registered with DSD because they thought it was compulsory; 30% of these Cooperatives registered with DSD because it would allow them to access *funding*. Furthermore, 32% of the entire sample of 100 is aware of the NPO income tax regulations, with 18% having lodged applications with SARS for tax exemption.





The cooperative under investigation for the case study has existed for six years. It registered as a Cooperative in 2001, and later as a NPO in 2002. It therefore has two different sets of founding documents: a statute for its Cooperative status, and a constitution for its NPO status.

This organisation is an urban, community-based organisation (CBO), which targets individuals in the immediate community who are terminally ill, i.e. not necessarily only (but mostly) HIV/AIDS patients.

Apart from accessing some model documents from DSD and submitting their application (which was successful the 1st time they submitted), the organisation has no knowledge of the NPO Act of 1997. They therefore registered with DSD as an NPO primarily because they could access funding as a NPO from certain funders.

Why dual registration?

Funding was accessed from other places by virtue of the organisation's status as a Cooperative. The two organisational forms it would seem are therefore used in different contexts to access funding from different sources. This represents an interesting adaptive response of the organisation to the current funding environment.

With the above in mind, the organisation indicated that they thought it was both easier to access funding and easier to link with a network/forum as an NPO, as opposed to as a Cooperative. The Cooperative Telesurvey indicated that amongst Cooperatives who are registered as NPOs as well, 22% thought it was easier as a Cooperative to access funding. Exactly the same amount (22%) thought it was easier as an NPO, while 23% thought that the type of organisation made no difference when it comes to funding. With regards to the ease of linking with a network/forum however, 29% indicated that this was easier as a Cooperative, compared to 15% who thought it was easier as an NPO.

Whilst this particular organisation registered as a Cooperative even though they think of themselves as a Non-profit organisation, primarily in order to access funding, the Cooperative Telesurvey indicated that the greatest number of these Non-profits who register as Cooperatives, do so because it would allow them to access support services from NCASA (72%). NCASA provides organisational development services to its members, which include help with registration, help with accessing funding as well as help with financial management.

6.6.2 Resources and Tax

The Cooperative receives the bulk of its funding from international donors. They had accessed some funding from three local corporate donors.

The organisation indicated annual revenue in the category R500 000 - R1 million. The Telesurvey indicated that by far the greatest majority of Cooperatives fall into the revenue category 0 - R50 000 annually (74%). They also indicated that they are aware of the NPO Income Tax regulations, and that they were in the process of registering as a Public Benefit Organisation (PBA), i.e. they were in the process of getting all the forms together, they had not as yet lodged an application with SARS. The Cooperative Telesurvey indicated that, of those Cooperatives who consider they to be Non-profits, 49% were aware of the NPO Income Tax regulations. 28% of these organisations indicated that they had lodged an application for exemption with SARS.

6.6.3 Case Study: Triple Registration

From the analysis so far it is thus clear that an It seems that organisations can choose to register with two or even three different regulatory bodies. On the dataset generated by the Telesurvey eight such





organisations with triple registration were identified. For the purposes of analysis three NPOs were interviewed to ascertain the perceived benefits of triple registration⁴⁶.

Perceived Benefits

All three organisations indicated that each legal entity was established in order to make something in particular possible for the organisation, the opinion that organisations like themselves should be "...creative when it comes to adapting to the environment" was expressed. For example, one such organisation established a Trust specifically for the purposes of buying and administering land, as they are based in a rural community. Another organisation indicated that their Trust entity was set up specifically in order to disburse funds that were available, but now that the organisation raises funds in other ways, the Trust is busy 'winding down', and will dissolve soon. Yet another organisation indicated that they established a Trust in order to feed money they make from catering back into their NPO, which provides training and skills development.

Both of the Section 21 companies interviewed indicated that they established a Section 21 company and a NPO primarily to facilitate fundraising as well as their application for tax exemption from SARS. Interestingly, both of the Section 21 companies regarded the NPO number in a similar way as the former Fundraising number, and both indicated that they could not apply for tax exemption without a NPO number. In this regard, all three organisations indicated that their NPO registration benefits them directly in terms of tax, whilst the two Section 21 companies also felt that it benefited them in terms of accessing funding.

The third NPO indicated that it sustains itself by means of all these different legal entities, i.e. the Trust raises money through catering services, and this money is protected by the Trust structure and fed directly into their NPO which provides training in cooking and catering. The organisation also runs a restaurant which is registered as a Cooperative. The Trust pays a salary to the people involved in the catering, while the Coop distributes profit to the people working in the restaurant. What is interesting in this regard, is that the organisation is entirely self-sufficient, and is not funded by government or by donors. Most of the people benefiting from the organisation's activities are women, and the organisation provides income to approximately 15 people, all with less than R50 000 revenue annually.

Ease of registration and awareness of the NPO Act

All three organisations indicated that they had registered all these legal entities under the same name, and that they had used the same or similar founding documents in each instance. Even if the same document could not be used for each registration process, enough similarity existed between them to make the different registration processes relatively easy.

Two out of the three organisations indicated that the registration of a Trust was the most complicated to do. One of the organisations indicated that the NPO registration procedure is not particularly easy or simple to do in comparison with the other forms of registration. All three organisations indicated that registration as a Public Benefit Organisation (PBO) with SARS was a difficult and time-consuming exercise.

When asked whether they think that some of these registration processes could be combined, the two Section 21 companies indicated that they think the Section 21 and NPO registration processes could be combined, as both organisational forms basically means the same thing. All three felt that the Trust registration procedure cannot be combined with any of the others, as not all Trusts are Non-profit. Similarly, the PBO registration with SARS needs to be kept separate, as not all Non-profit Organisations can necessarily acquire the status of PBOs.

⁴⁶ Two of these organisations were registered as Section 21 companies, Trusts, and NPOs. The remaining organisation was registered as a Cooperative, a Trust, and an NPO.





All three organisations indicated that they are aware of the NPO Act and feel that they understand the Act's objects "fairly well".

Perceptions of an 'enabling environment'

When asked about whether they think the current environment for NPOs is enabling, all three organisations felt that the environment is enabling to those organisations that have the capacity to adapt to it. One of the organisations indicated that the current NPO environment is very enabling provided that there is a complementary responsibility on the part of organisations when it comes to maintaining good management and financial structures.

All three organisations felt that there is scope for increased cooperation between government and NPOs, and that government could be more involved in building the capacity of organisations to become fully-fledged partners in community service delivery. Two of the organisations felt that there is a need to improve access to funding sources, mostly by way building the capacity of the NPO sector. One of the organisations indicated that there should be more of a focus on improving the financial sustainability of organisations, as opposed to organisations being dependent on donor funding.

6.7 Proposals on Coordinating the Regulatory Environment

There are several approaches that have been proposed on how to address the lack of coordination between the regulatory frameworks. The following reflects what has come out of data collected for this impact assessment:

- There needs to be an overriding piece of legislation, which coordinates the various frameworks. There is little harmonization between SARS/DTI/DOJ.
- There are also arguments that the NPO Act should deal exclusively with smaller, especially community based NPOs. This argument postulates that the NPO Directorate should be responsible for these smaller and emerging organisations, providing education and support to them, and not only registration. These organisations should not be required to comply as strictly with financial reporting requirements as is currently required under the NPO Act, or conversely, that these organisations should be capacitated to enable them to report. A further part to this proposal postulates that those who qualify for tax exemption - should not have to apply for NPO registration, i.e. the tax exemption framework should not require NPO registration as a prerequisite and that these two registration processes should be linked (those that become registered with SARS automatically become registered as NPOs).
- Some argue that the NPO registration does not fulfil a function and should be done away with.
- The Registrar of Cooperatives is moving from the Department of Agriculture to the Department of Trade and Industry. CIPRO will be taking over the administrative process of registering for Cooperatives, and will be able to advise bodies on the most appropriate form of registration for the (e.g. Close Corporation or Cooperative). Companies and Intellectual Property Rights Office (CIPRO) is increasingly becoming a one-stop shop for profit making entities. Arguments have been made that the NPO Directorate should outsource its registration to CIPRO or a similar body.
- There have been calls for an Independent Registration Authority that is not part of a government department for non-profit organisations, similar to the Charities Commission in the UK. The idea here would be that there is a single national, public registry of organisation that operate not-for-profit (as opposed to several different regulatory bodies), and that engagement by various actors in issues relating to the non-profit sector would go through this *one central point*. Proposals are on the table for a South African NPO Regulatory Authority (SANPORA).





6.8 Actual Benefits of the various forms of registration

None of the registration frameworks have benefits within themselves for the non-profit sector. The NPO Act has a clause that indicates that the Minister will assign benefits to organisations if registered. The Minister has not yet implemented this clause. As the Act stands there are no direct benefits for NGOs/CBOs. However, the perception amongst organisations seems to be that NPO registration is a requirement for funding through government funding agencies such as the NDA, National Lotteries and the Poverty alleviation fund (DSD), although funding is not guaranteed if you have it (the national Telesurvey of Voluntary Associations registered with DSD indicated this perception as the biggest reason organisations chose to register as NPOs). Also, the Tax Exemption Legislation requires that PBOs and other Non-profits register with the NPO Directorate in order to be considered for tax exemption.

6.8.1 Tax Benefits

SARS Tax Exemption is considered the key indirect benefit of the NPO Act registration. An important issue to note about the SARS tax exemption is that it pertains to Public Benefit Originations, which is further defined by Public Benefit Activities. This is technically different Non-profit-Organisations. The definitions of the three are listed below:

Table 37: Definitions

Category	Abbreviation	Definition in the relevant Act
Non-profit Organisation	NPO	"non-profit organisation means a trust, company or other association of persons- (a) Established for a public purpose; and (b) The income and property of which are not distributable to its member or office bearers except as reasonable compensation for services rendered."
Public Benefit Organisation	PBO	"Any organisation which is a company incorporated under Section 21 of the Companies Act, a trust or an association of persons carrying on a public benefits activity and complying with the provision of Section 30 of the Act".
Public Benefit Activities	PBA	"PBAs are categorised as follows: <ul style="list-style-type: none"> • Welfare and humanitarian • Health care • Land and Housing • Education and Development • Religion, Belief or Philosophy • Cultural • Conservation, Environment, and Animal Welfare • Research and Consumer Rights • Sport • Providing of funds, assets and other resources to approved organisations carrying on PBA's • General"

SARS Tax Exemption legislation, by requiring that PBOs as defined by Public Benefit Activities (PBAs) must register as NPOs with DSD, has brought a wide range of categories of organisations that would otherwise not have registered with the NPO Directorate to register.

There are doubts as to whether SARS tax exemption is an actual benefit for NPOs. If an NPO chooses not to apply for the Tax Exemption and submits returns that indicate no profit, they will not be required to pay tax. Since this is often the case for Voluntary Associations registered as NPOs, registration with SARS seems obsolete. However a key clause on protecting trading rights, which provide a ceiling to amount of money that can be part of income generated activities through an organisations own





initiatives, (as opposed to be fundraised for), seems to be the benefit. S30 (3) B (iv) of the Act indicates that the gross earning of fundraising activities will be taxed if it exceeds 15% or R25000 will be liable for taxation. There is of course also section 18(a) of the amendment to the tax law relating to donor deductability: it could be in the interest of an organisation to register in terms of section 18(a) in order to attract donations.

There is another way to get around the NPO registrations for PBOs contained in S30 (3)g which reads:

"...has, within such a period as the Commissioner may determine, been registered in terms of section 13(5) of the Non-profit Organisation Act, 1997, and complied with any other requirement imposed in terms of the that Act, unless the Commissioner in consultation with the Director of Non-profit Organisations designated in terms of section 8 of the Non-profit Organisation Act 1997, on good cause shown, otherwise directs..."

There seems to be frustration amongst Public Benefit Organisations due to the requirement to register as a NPO with DSD. Participants of this impact assessment have indicated that they have had to amend or change their founding documents, and found this onerous. One such example was given by a Faith Based Organisation, which commented:

"...this means that you have to wait for two years for your Bi-Annual General Meeting, where people in authority can amend documentation or introduce a new one. Then you can register with the NPO and then you can apply for tax exemption status".

6.9 Governance Issues

Managing serious cases of bad governance or directors not fulfilling fiduciary responsibility, is currently the responsibility of the Supreme Court. Companies have to take up a case and prove negligence or the non-fulfillment of fiduciary duties. The proposed companies tribunal (Company Law Review) will resolve these matters more quickly and probably more cheaply. With regard to the non-profit sector, the procedure for resolving issues pertaining to the poor performance of Directors is an internal organisational matter. It is not clear who is responsible for dealing with mismanagement or corruption, whether on director or board level in Non-profit Organisations. It is assumed that these matters have to go the Supreme Court. There is no other avenue to deal with this.

Another key finding pertaining to the NPO Act is that it contributes to improved governance of NPO's. As it is a step up from the voluntary organisation under common law, the NPO Act through its registration process encourages an organisational governance structure which is separate from its body of operations. Although in practice it is often the case that members of the governance structure are also employees of the organisation, the message is that such a situation could represent a conflict of interest at some point. The Act furthermore limits the benefits that could possibly be derived from the operations of a NPO. Participants that were interviewed argued that this was a key achievement, as it shifted organisations away from the 'one man/woman act'. The NPO Act requires that organisations that register have in place governance structures that are transparent and accountable.

In practice, through the admission of the NPO Directorate and the other participants of this assessment, one cannot assume that NPO registration by itself achieved this. Having a NPO registration number does not mean that the organisation has proper systems in place. The organisation has through the registration process provided the Directorate with a constitution containing minimum requirements, and the organisation may have complied with the NPO Act through submitting the appropriate reports, but it does not mean that is free of mismanagement.

Some participants pointed out that there is no short cut to good governance. The NPO Act as it stands is not good enough. Good governance can only be assessed through on-site appraisals and improved through capacity building and training.





6.10 Voluntary versus Compulsory registration

A key debate that has emerged from stakeholders and government officials in the regulatory framework is the issue of whether registration in terms of the NPO Act should remain voluntary or whether it should become compulsory.

Some Faith Based Organisations argue that the registration requirement of the NPO Act should remain voluntary as it gives organisations associated with the church the option to register. This argument stems from the notion that the church as a hierarchical and stable organisation, with a top down appointed leadership, does not find abiding to an elected or nominated board in its interest. However, with the shrinking of official congregation members, churches do seek public participation in projects, and hence find governance structures such as boards useful. Issues pertaining to preserving the interest of the churches can still be protected in the constitution or the Trust Deed.

Whilst the public register produced by the NPO Directorate is seen as its key achievement, many argue that it cannot be seen as a reflective register because registration in terms of the NPO Act is voluntary and not compulsory. Hence not all organisations that should be registered are registered.

A few members of the panel of arbitrators of the NPO Act argue that the registration process should be compulsory for all organisations carrying out public interest work. If an organisation is engaging with in public work, and perhaps more importantly, is using public funds, not only must it be registered, it should also have the (verified) support of the community it is claiming to support through its activities.

Although registration in terms of the NPO Act is voluntary, Section 30 of the Income Tax Act requires registration as an NPO, thus compelling organisations to register in order to access tax benefits.

Requirements from some donors in grant finance institutions also compels organisations to register.

6.11 Regulation or Administrative Burden?

A key finding from interviews both from interest groups and regulatory bodies, argued that there are just too many registration processes to comply with. Even for a sophisticated and well-resourced organisations, the numerous registration processes and compliance procedures are frustrating. A Section 21 company may often have to register three times (S21, NPO, Tax Exemption) and comply with three different regulatory bodies.

On the other end of the spectrum, a small, emerging CBO will likely struggle with so many registration processes. For example, an Early Childhood Development (ECD) organisation has to register with the NPO Directorate, with SARS for Tax Exemption, and with the ECD Directorate within the Department of Social Development. For a rural ECD organisation, this represents a significant cost in both time and money. In addition, this type of organisation, especially if it is rurally based, cannot easily get to an Accounting Officer, let alone afford the fees of an Accounting Officers approval, a compulsory requirement for compliance.

It should be noted that the different registration processes do not require the same information. As mentioned above, organisations have to amend their founding documents and reporting requirements. The Act is unfriendly to smaller organisations that cannot afford financial reports.

The Directorate has also endured some criticism with regards to its own administration of the process of registration, reflecting not a shortcoming of the NPO Act but of the implementation of the Act i.e. the delay and backlog. There also seems to be a lack of capacity in terms of staff members to modify operations, leading to allegations that the NPO Directorate is not meeting the terms of the Act as it should. Specific criticism has been directed at how applications are processed, for example: the entire application is sent back if it is not correct.





6.11.1 Case Study: The Fundraising Act of 1978

Over the duration of this impact assessment, a small number (however significant) of organisations made various comments regarding their experience being registered under the Fundraising Act, 1978. It was therefore decided to explore these issues further in the form of interviewing organisations that were previously registered under the Fundraising Act, and which are now registered under the NPO Act. The following observations were made:

The Transition

The NPO Act of 1997 repealed the Fundraising Act of 1978, which sought to control the funding and activities of NPOs. The NPO Act therefore allows more different kinds of NPOs to get access to legal status and funding.

The Department of Social Development allowed a two-year period between September 1998 and August 2000, during which organisations registered under the Fundraising Act could re-submit applications in terms of the NPO Act. The database accessed from the NPO Directorate of organisations registered in terms of the Fundraising Act (last updated in August of 1998) contains approximately 17 500 entries. A second database containing organisations that have re-applied in terms of the NPO Act (last updated in August of 2000) contains just over 5 500 entries. These figures suggest that only 31% of organisations previously registered under the Fundraising Act re-applied to be registered as NPOs. Many of these organisations do not exist anymore, as they were set up to deal with a particular issue or crisis which has since been dealt with. Apart from this, it can be speculated that some of these organisations are registered with other regulatory bodies (as Section 21s or Trusts) and that they therefore did not see any real reason to re-apply to DSD. Furthermore, since registration in terms of the NPO Act is not compulsory, it is likely that many of these organisations did not see any real need to re-apply for registration in terms of the NPO Act.

Comparing the Fundraising Act and the NPO Act

Only one out of the five organisations indicated that they felt there was a difference in the environment since the NPO Act repealed the Fundraising Act. This organisation felt that it was easier to get funding and to comply with reporting requirements than previously under the Fundraising Act.

The other four organisations felt that there is no difference in the environment between the period before 1998 and the period after, and that access to funding and compliance standards are the same as they were before.

All five organisations indicated that their registration under the NPO Act was not automatic, they had to re-submit applications in order to get an NPO number.

Perceptions of the current Regulatory Environment

Four out of the five organisations indicated that the current NPO regulatory environment is no better than before. The remaining one organisation indicated that the current NPO regulatory environment is better than before, as it makes increased regulation of the sector possible. One of the organisations indicated that the environment is still very unfriendly towards small Community Based Organisations (CBOs) who struggle to comply with the requirements of the different regulating bodies. Three out of the five organisations interviewed indicated that there should be more recognition from government of Non-profit Organisations, their needs and what they can offer in terms of service delivery.

This sample group felt that there is no significant difference in the Non-profit environment between the pre-1998 (under the Fundraising Act) and post-1998 (NPO Act) period.





7. OBJECTIVE 3: MAINTAINANCE AND IMPROVEMENT OF ADEQUATE STANDARDS

This section addresses Chapter 1, Section 2(a) of the Act, which relate to *"the establishment of an administrative and regulatory framework within which nonprofit organisations can conduct their affairs"*. The indicators used in this impact assessment are as follows.

Theme Indicator: Encouraging NPOs to maintain adequate standards of governance, transparency and accountability, and to improve those standards

SPECIFIC INDICATORS TO MEASURE PROGRESS OF THE ACT	DEFINITION OF THESE INDICATORS
Contribution of the department to maintaining standards	The number of concrete interventions made by the department to a) contribute to improving standards of NPOs. It also looks at if the department has maintained standards through its regulatory framework and or through the registration process.
Increased services offered by DSD to the NPO sector to maintain and improve standards of governance, transparency and accountability.	This measures the ability of the department to monitor, regulate and assist the sector in maintaining standards
Increased capacity and capability in the department to broaden services	An assessment of what the internal capacity is to monitor current services and to offer additional services / literature / awareness
The department's ability to utilise opportunities and partnerships to ensure standards of NPOs are maintained.	Examine other programmes and assess partnership opportunities with others carrying out this service to the sector broadly. It also measures the opportunity cost for the department to take on partnerships vis a vi the viability and feasibility for the department to take on meaningful and sustainable services itself.

7.1 The Role of the NPO Directorate in Promoting Good Governance

Apart from the required narrative documents upon registration, and the submission of financial statements and narrative reports annually, the Directorate does not request further information or monitor governance with organisations registered as NPOs.

The development of strategic partnerships can play an important role in improving standards in the NPO sector. While the role of the NPO Directorate in developing partnerships is scrutinised in this report, an overall assessment can be made that this is an area for further development and strengthening. This refers to government driven programmes, partnerships with donors as well as partnerships with institutions that engage with NPOs. The establishment of partnerships with the previously mentioned sectors can further enable the monitoring of standards of governance, transparency and accountability. Good governance is promoted by the Directorate through the requirement of narrative documentation on application of registration. Specifically, applicant organisations are required to submit details of Board Members / governance structure.

The Directorate has, however, made its first concrete intervention in the Early Childhood Development (ECD) sector. Through a partnership with the ECD Congress, the NPO Directorate aims not only to ensure that those service organisations are able to and do register, but also that they are able to and do report on progress annually. The Directorate also participated in HIV/AIDS meetings, and discussed issues pertaining to capacity building and the sharing of information.





It is clear, however, that registration in itself is neither driven by a motivation to improve standards, nor are improved standards seen as a primary benefit of registration.

Table 38: Reasons for registration (%)

Reason for registration	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops
We thought it was compulsory	61	64	71	29	48
We would be able to apply for funding	27	28	43	33	52
We would get funding from government	4	5		2	17
Our funders required it	1	1	3		
We could apply for exemption from municipal rates				2	
We would benefit from Skills Levy Act				2	
We could apply for Tax Exemption	2	2	31	23	14

However, when talking about the outcome of registration, the focus has clearly been on the financial side, in particular funding from government and other sources, and tax exemption. Rather less consideration is given to the benefits of improved governance.

Table 39: Results of registration (%)

Result of registration	NPOs registered with DSD	VAs Registered only with DSD	Orgs registered as Section 21 s	Orgs registered as Trusts	Orgs registered as Coops
Accessed funding from government	29	28	21	12	14
Accessed funding from other sources	21	17	24	20	4
Obtained Tax Exemption	22	13	53	49	29
Improved capacity and systems	8	5			
Improved governance	6	2			11
Been awarded State tenders	1	1		2	4
Nothing yet	32	31	17	35	50

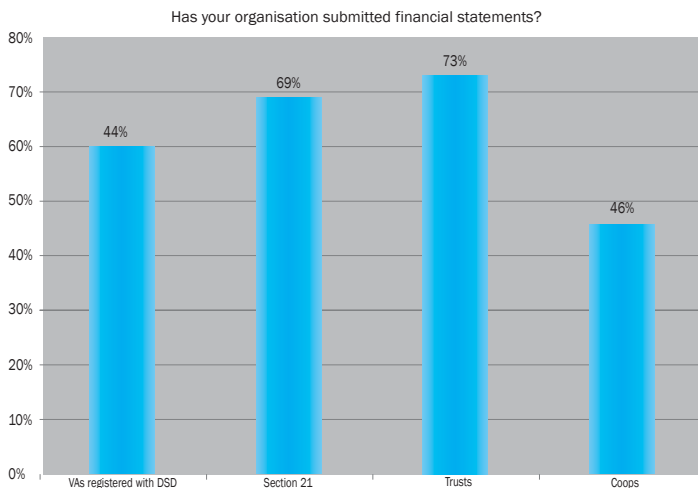
7.2 Reporting

The majority of organisations interviewed for the Telesurvey submitted their financial statements to the appropriate regulatory body, showing again a distinction between the more professional organisations (69% of Section 21 companies and 73% of Trusts) and the less professional ones (60% of Voluntary Associations registered as NPOs and 46% of Cooperatives). Whilst an Audit is a more indepth examination of the accounts, the Act requires that financial statement need to be approved by an Accounting Officer. However for many professional organisations, these statements are audited (94% of Section 21 companies and 98% of Trusts, compared with only 53% of Voluntary Associations registered as NPOs, 25% of unregistered Voluntary Associations and 35% of Cooperatives).



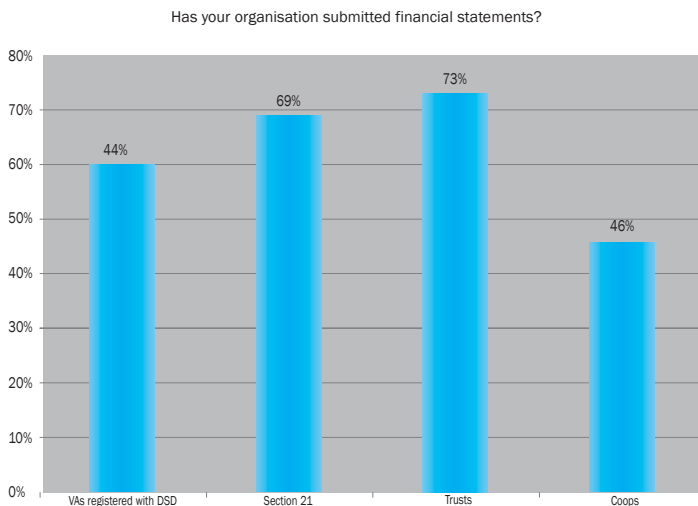


Figure 3: Percentage of organisations that have submitted Financial Statements/Records, by type of organisation



From the remaining 40% that did not submit their financial statement, the most common reasons given were firstly, that an organisation does not have financial statements (58% of Voluntary Associations registered as NPOs who failed to submit statements mentioned that) or that they did not know they had to (20% of Voluntary Associations registered as NPOs) - indicating in both cases lack of capacity.

Figure 3: Percentage of organisations that have submitted Financial Statements/Records, by type of organisation



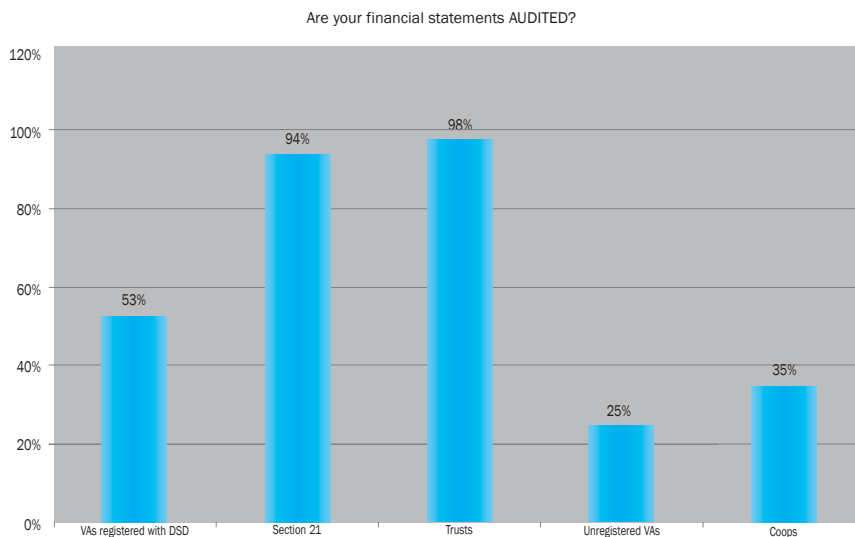
From the remaining 40% that did not submit their financial statement, the most common reasons given were firstly, that an organisation does not have financial statements (58% of Voluntary Associations registered as NPOs who failed to submit statements mentioned that) or that they did not





know they had to (20% of Voluntary Associations registered as NPOs) - indicating in both cases lack of capacity.

Figure 4: Organisations that have AUDITED financial statements



Narrative reports were submitted to a slightly lesser extent than the financial statements were, but showing the same pattern as before: 88% of Section 21 companies and Trusts submitted reports compared to 55% of Voluntary Associations registered as NPOs and 41% of Cooperatives. The reason for lack of submission was again lack of capacity (ignorance or inability to complete reports).

Interestingly, Section 21 companies were less diligent in submitting their financial statements to the Department of Trade and Industry (only 69%), and the same situation was apparent for Trusts and the Department of Justice (73%). Although a majority in both cases, the compliance rate is not as high as that with the NPO Act. Less than half of Cooperatives (46%) submitted their financial statements to the Department of Agriculture.

7.3 Failure to comply with Reporting Standards

As mentioned earlier, the NPO Directorate requires that organisations registered with them as NPOs must submit financial statements approved by an Accounting Officer, along with a narrative report completed according to a particular format which is available on the Department's website within six months of their financial year end. The Directorate does not accept a balance sheet, trial balance or income and expenditure statement, even if signed off by the organisations' governing body. However, the Directorate has also been known to accept an affidavit and bank statements from organisations that have no money resources. These provisions seem to be not generally known among organisations, with many organisations still failing to comply. 23% of the Voluntary Associations registered with DSD who did not submit their statements said that they failed to do so because they do not have any financial records. This group could obviously benefit from the knowledge that they can submit an affidavit and bank statements. Another 7% of this group indicated that they were unaware of the need to submit these reports.

If organisations fail to submit these documents, they are removed from the Directorate's database. A problem in this regard was picked up in the stakeholder interviews and focus group discussions: organisations that are de-registered for failure to comply with reporting standards still retain their reg-





istration certificates. They can therefore still pass as properly registered organisations if the number is not cross checked with the department on its database.

7.4 Monitoring of NPOs

As noted the Directorate requires annual reporting, in order to promote a reporting culture in organisations. Whilst majority of those organisations cope with this request, there are others that are hesitant to comply.

These latter groups, who have not submitted narrative and financial reports annually, appear to do this for various reasons. To speculate, it appears that some have been unable to raise funds and implement work, or they have fallen apart, or they did not in a cohesive way exist in the first place. Technically the Directorate follows an enacted procedure to deregister these organisations. Those that fall under this category are expected to return their registration certificates. Whilst a few comply, many hold onto their certificates.

The following table provides illustration of the number of NPOs that have been de-registered or whose registration is on appeal

Table 40: De-registration of NPOs

Financial Year Ending	Number deregistered	Number of appeals received	Number fully reinstated	Number conditionally reinstated	Number denied
1999 - 2000	74	-	-	-	-
2000-2001	702	27	9	5	18
2001-2002*	1093	32	23	9	9
2001 - 2002		32	19	15	13
2002-2003**	738	39	23	10	16
Totals	2607	130	74	39	56

*The appeal cases were heard in two instalments of 32 cases per sitting.

Source: NPO Directorate

7.5 The Panel of Arbitrators

The panel of Arbitrators functions are outlined in terms of S22 of the Act. This section of the Act was later amended (7 June 2000) to allow for appointed arbitrators as opposed to nominated arbitrators by the Minister. The panel is responsible for adjudicating appeal cases within three months after DSD has received them from public.

7.5.1 Case Study: Voluntary de-registration and organisations that dissolved

A mini-survey of organisations that were de-registered was conducted for the purposes of this study. The information was received from the NPO Directorate in the DSD in the form of databases. These (separate) databases are made up of organisations that were de-registered for failure to comply with reporting standards (more than 2 100), organisations that de-registered voluntarily (a total of 36), or organisations that dissolved (a total of 23).

It should be noted in this regard that organisations that dissolve, or organisations that do not wish to be registered with the NPO Directorate for whatever reason, can simply refrain from submitting their financial statements and narrative reports, allowing the process to run its course for their de-registration,





as opposed to actually requesting that they be de-registered. This was the case with the organisations captured on the voluntary de-registration and dissolved organisations databases mentioned above. It is therefore difficult to accurately differentiate from these databases between organisations that are still active and simply do not comply, and those that have dissolved or changed their structure.

If all three these databases (de-registered for failure to comply; de-registered voluntarily; and dissolved organisations) are counted together, a total of 2 159 de-registered organisations are captured. This amount represents a total of just over 9% (9.27%) of the total registered amount of organisations at the end of March 2004 (23 302 registered organisations).

Dissolved NPOs

Of the two organisations contacted with regards to their dissolution (this database contains a total of 23 organisations), one indicated that they dissolved because their funding dried up in 1999, while the other indicated that they dissolved in 2002 because they could not find any volunteers to help with the organisation's work. A difficulty encountered with this database relates to the fact that these organisations do not exist anymore, most of the telephone numbers on this database are no longer valid.

In one instance, the organisation completely disbanded, and is not active at all anymore. In the other instance, a crèche that was started by the organisation was taken over by another organisation. In other words, the community service was still being provided, but by another organisation.

One of these organisations indicated that they would not start up again and would therefore not try to register as a NPO again. The other organisation indicated that if they could find people willing to volunteer again, they would definitely start up and register as a NPO again.

Voluntary de-registrations

Two organisations were interviewed with regards to voluntary de-registration (this database contains a total of 36 organisations). Both of these organisations de-registered in 2000, and in both instances the organisation submitted a letter to the NPO Directorate requesting to be de-registered.

One of the organisations de-registered because they had completed their task (building a community hall, crèche and centre for the disabled) and had then handed over to the beneficiary community. The community then registered their own organisation, and submitted their application for registration as a NPO along with the letter from the dissolving organisation. The dissolved organisation initially started up in 1989 and was therefore previously registered under the Fundraising Act of 1978.

The other organisation interviewed, voluntarily de-registered because *it became too expensive for them to comply with the reporting standards expected by DSD*. This organisation indicated that they de-registered in order to do away with the financial and administrative burden of complying with the reporting requirements of the NPO Directorate. This organisation indicated that because they are a school, their major source of funding is their own school fees; they do not generally have to look for funding from other sources and therefore see no real benefit to being registered as a NPO.

This organisation indicated that they would register as a NPO again if the need to have an Accounting Officers financial statements were waived by the NPO Directorate. Yet again, as noted in other parts of this report, the Directorate has been known to accept an affidavit and bank statements from organisations that have no money resources. These provisions seem to be not generally known among organisations, with many organisations still failing to comply. 23% of the Voluntary Associations registered with DSD who did not submit their statements said that they failed to do so because they do not have any financial records. This group (and the organisation mentioned above) could obviously benefit from the knowledge that they can submit an affidavit and bank statements in lieu of Accounting Officers statements. Another 7% of this group indicated that they were unaware of the need to submit these reports.





7.5.2 Case Study: Organisations that were de-registered for non-compliance

Two out of the six organisations interviewed for this mini-survey indicated that they were de-registered for failure to submit their financial statements and narrative reports. These two organisations therefore knew that they had to submit these documents, but failed to do so. One organisation did not know that they had to submit these documents, and only found this out after they received a letter from DSD. At that point they could not get the documents together in time.

Two organisations indicated that they had submitted their statements, but were de-registered nonetheless. Both are in the process of following this up with the NPO Directorate. It could be that these documents were not completed in the way they should have been, or that they did not arrive on time. One of these organisations is also registered as a Section 21 company, submitting audited statements.

One of the organisations in this sample was de-registered because the organisation dissolved. In other words, instead of communicating this fact with the NPO Directorate, they simply allowed the process to run its course leading to their de-registration. The organisations interviewed in this sample were generally de-registered between 3 months and 3 years ago. All of them (except for the dissolved organisation) wants to be registered as NPOs and are in the process of re-registering.

As explained above, out of the six organisations interviewed in this sample, a third indicated that they were de-registered for failing to submit the correct documentation. Another third indicated that they had submitted, but were de-registered nonetheless. Both these latter organisations indicated that they could not understand why they were de-registered. In both instances, a letter from DSD simply indicated that they had failed to comply with the reporting standards. Both of the latter organisations therefore also knew that they were required to submit these documents.

Sixty-one percent of organisations registered with DSD with NPOs indicated that they had indeed submitted the required documentation to DSD, with 36% indicating that they had not, while a further 3% indicated that they were operational for less than one year.

Of the group that indicated their failure to submit the required documentation, the greatest majority (57%) indicated that they did not submit because they did not have any financial statements. A significant amount (21%) indicated that they did not know they had to submit these documents, while 22% had 'other' reasons. These 'other' reasons most commonly included the response that there were no funds or funding in the organisation or that the respondent did not have the time or capacity to compile these documents.

The issue of having an Accounting Officers approval of statements apparently represents much difficulty for NPOs. In the Telesurvey of NPOs registered with DSD, 46% of the organisations surveyed indicated that they either did not have financial statements or that these statements were not approved by an Accounting Officer. This trend was also indicated in some of the stakeholder interviews conducted with regards to Early Childhood Development (ECD). Organisations, especially small and rural organisation, struggle to comply with the requirement that financial statements be approved by an Accounting Officer. Many organisations seem to operate on non-money contributions from community members (such as time of volunteers, food and so forth). It was suggested in the stakeholder interviews analysis that it should be possible for an organisation to submit an affidavit indicating that they had not received any funding, such a system would however be open to abuse.

Apart from the burden of preparing financial statements and having them approved by an Accounting Officer, there also seems to be a significant lack of awareness of the reporting requirements expected by the NPO Directorate.





8. OBJECTIVE 4: INFORMATION ACCESS

This section addresses the objective outlined in Chapter 1, Section 2(d) of the Act, which sets out the objective of "creating an environment within which the public may have access to information concerning registered nonprofit organisations". The indicators used for the impact assessment were as follows.

Theme Indicator: Creating an environment within which the public may have access to information concerning registered organisations

SPECIFIC INDICATORS TO MEASURE PROGRESS OF THE ACT	DEFINITION OF THESE INDICATORS
1. Assess form and process of data captured	The indicator measures the form of data collected and how this is captured
2. Assess mechanisms of storage and level of accessibility	This indicator assesses the ability of the current systems for public transparency and accessibility and Assessments the legislation for procedures in this regard.
3. Assess communication and dissemination strategies of the NPO Directorate.	This indicator assesses the current systems for public communication and dissemination and Assessments the legislation for procedures in this regard.

8.1 NPO Directorate Responsibilities

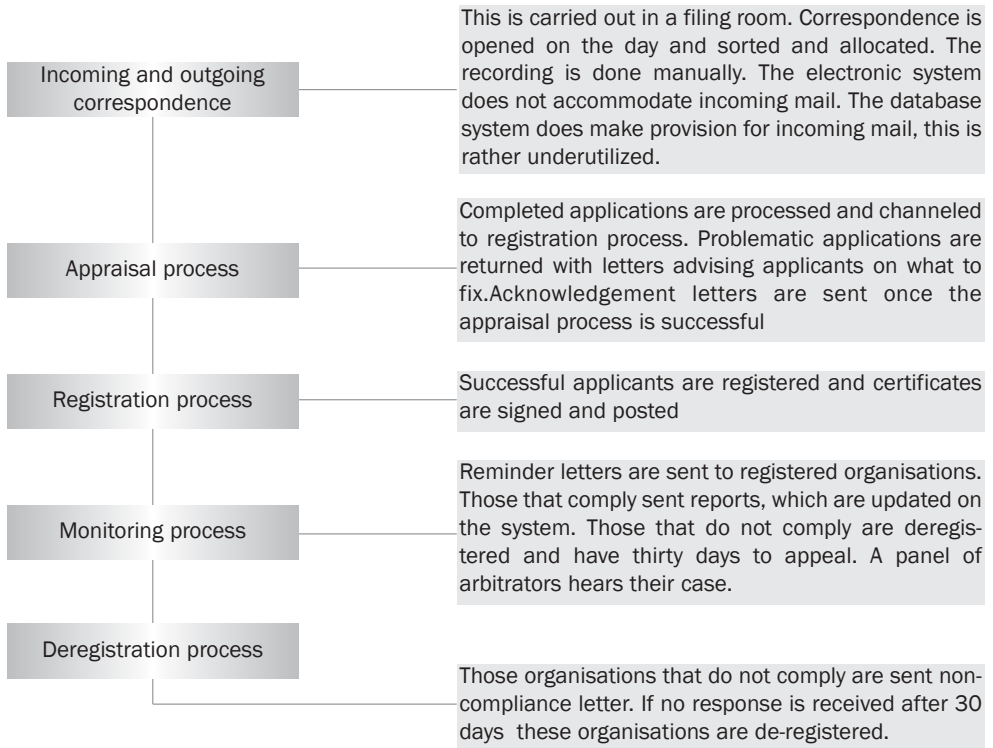
In assessing the ability of the NPO Directorate to make information available to the public it is important to clarify what the expectation is of the NPO Directorate in this regard.

Section 25 of the Act, access by public to documents submitted. This section of the Act reads:

- (1) *The director must preserve in an original or reproduced form the constitution of a registered Non-profit Organisations and must preserve- The constitution of a non-profit organisation whose registration has been cancelled or that has voluntarily deregistered; and Any report or document submitted to the director in terms of the Act, in an original or reproduced form and for the prescribed period.*
- (2) *All members of the public have the right of access to and to inspect any document that the director is obliged to preserve.*
- (3) *The Minister must prescribe the circumstances and manner in which the public may have access to or inspect such documents.*

The following diagram presents the processes the Directorate has to undertake, and the information and correspondence generated by each step:





8.2 Information Management

The NPO Directorate has implemented a series of systems that is updated, modified and maintained by staff members, with some help from the IT section in the Department.

8.2.1 Successful/Unsuccessful Registrations

The Act indicates that a successful applicant must be entered on the register. They must be informed in writing of the day their registration was successful and must be provided with their NPO number (See section 13/14/15).

An acknowledgement letter is sent out as soon as the application process is complete and the application has met the requirements of Section 12, despite the letter not being a requirement in terms of the Act. The Directorate receives many queries about whether an application has arrived or not. If an applicant has not submitted all the required documentation, the Directorate informs the applicant of what is outstanding and then returns the whole application. The applicant must then reapply. There is no application fee.

8.2.2 Information Systems

Information is stored electronically on a database and manually in a records room. These are filed





according to a NPO registration number and can also be accessed by organisation name.

The Chief Directorate requires the information for reporting. It also appears in quarterly and annual reports produced by the NPO Directorate

All staff members interviewed thought that the database and the software packages used was good. This perception is held because staff members can identify problems and upgrade the system themselves. These problems are identified and the IT department is contacted to fix the system.

8.2.3 Capacity and Backlogs

Apart from the director, a deputy and two assistant directors, all other staff members are either senior administrators or administrators. There are 13 fulltime staff members in the NPO Directorate.

Many staff members in the Directorate indicated that telephone queries took much of their time. As a national competency, the Directorate has to answer calls from all over the country. These calls can take from a minute to about twenty and eat into the working day of staff members.

The backlog was first addressed in reports to the Chief Director in July 2002, and a contract worker was brought on board to help with this issue. Since November 2003 the backlog has grown again. The current status of the backlog is:

Table 41: Backlog as at September 2004

Process	Backlog
New mail received	No backlog
Appraising new applications for approval	July 2004 (± 2000 applications)
Assessing monitoring reports	June 2004 (± 2000 applications)
Responding to written queries	June 2004 (± 400)
Preparation for arbitration	June 2004 (same as the monitoring backlog)
Certificates not claimed	1500

The backlog is a result of several factors. Firstly, until recently the Directorate has been chronically understaffed. Apart from staff issues, various other processes have resulted in an increase in applications for NPO registration. There seems to be a general perception among organisations that NPO registration is either compulsory (more than half 58% of Voluntary Associations registered as NPOs) or that it will enable them to access funding, especially from government sources (29% of Voluntary Associations registered as NPOs). This perception is further confirmed by the unregistered Voluntary Associations survey: of those that indicated their intention to register with DSD, 52% indicated that they thought it would allow them to access funding. Another 25% indicated that they believed it was compulsory to register as a NPO with DSD. Apart from these perceptions, organisations that are submitting applications to SARS for registration as PBOs are requested to register as NPOs with DSD. Judging by the increase in applications to SARS, the increase in applications to the NPO Directorate makes sense.

Furthermore, reminder letters sent out by the Directorate for the submission of annual reports has resulted in a, high volume of correspondence. This was not anticipated. The deregistration process, and adequate preparation for arbitrators to make a call on deregistrations, required a high degree of preparation from Directorate staff. This has further contributed to a backlog in other areas of work for the Directorate staff.





The backlog is an indication that the Directorate has not met its regulatory requirement to respond to incoming correspondence / reports / applications within the prescribed two month allowance.

8.3 Form of Information

Consistent criticism has been directed through the Assessment at the current form of information collated and disseminated to the NPO sector. Two specific emerging themes have been consistent in this criticism:

- The current information does not provide important monitoring information on the scope, characteristics, and trends within the NPO sector.
- The current information does not promote transparency regarding the awarding of government grants to NPOs.

Stakeholders have identified the need to revise the current format of information required of NPOs in the application and reporting templates to include information relevant to the NPO sector and its stakeholders. This information should include data relating to financial and staff capacity of the NPO, funding sources, services offered and area of operation, and target groups and clients. Stakeholders suggested these could be introduced with simplified information templates or questionnaires.

Of particular concern to a number of respondents in this study was the lack of information available on awards and grants made to NPOs by government departments, and government supported grant-making agencies. This negates the principle of transparency, and undermines good coordination and efficiency in the sector, as very little is known about where government resources are being allocated, to whom, and for which services.

8.4 Dissemination

Respondents have also criticised the limited scope of current information dissemination and communication strategies, and argued that current dissemination strategies do not address the constituency that the NPO Directorate is serving - NPOs who are primarily CBOs. This sector does not generally have ready access to electronic means of information dissemination, and is more reliant on telephonic or face-to-face communication mediums.

The department has attempted to address information dissemination through a web-site, an on line database of registered organisations, and dissemination of brochures and printed documents through provincial offices. It would appear that the scope and reach of these dissemination strategies have been limited.





9. OBJECTIVE 5: PROMOTING A SPIRIT OF CO-OPERATION AND SHARED RESPONSIBILITY

This section addresses the objective outlined in Chapter 1, Section 2(e) of the Act, which sets out the objective of "promoting a spirit of co-operation and shared responsibility within government, donors and other interested persons in their dealings with nonprofit organisations". The indicators used for the impact assessment were as follows.

Theme Indicator: Promoting a Spirit of co-operation and shared responsibility within government, donors and other interested persons

SPECIFIC INDICATORS TO MEASURE PROGRESS OF THE ACT	DEFINITION OF THESE INDICATORS
The level of the DSD's NPO department's engagement, networking, sharing information cooperation on projects and partnership with other agencies	This indicator measures the degree of Public- private partnerships, i.e. relations between government and civil society
The degree / level of formal relations between government departments	This indicator measures the formal partnership and cooperation between relevant departments
Opportunities for participation of interested groups in legislative and policy process	This indicator measure the opportunities taken up by the department to liaise with interest groups
Increased specific NPO funding	This indicator measures in what way has the department increased external funding for the NPO work in the directive and sector.
Increased profile of the NPO sector	This indicator measure increased profile of the NPO sector by activities of the department.

9.1 Government Grantmaking

In many government departments there are programmes that are geared to support NGOs. Examples of these are:

- *The Department of Health* has a fund for NGOs and CBOs and these are orientated towards Home Based Care and HIV/AIDS awareness organisations.
- *The Department of Education* has a budgetary line item that is geared towards community and private ECD Organisations that cater for grade R learners.
- *The Department of Water Affairs and Forestry* has a fund for communities engaging in water projects.
- *The Department of Trade and Industry* has a fund for counselling of persons in severe debt.
- *The Department of Agriculture* has a fund for projects engaging in Food Security.

These are just a few examples. The amount of money disbursed by these government projects is not clear at this stage. The assumption is that these grants come through the following sources:

- Bilateral funding agreements allocated for a particular intent
- The Presidents Fund
- Parliament
- Budgetary allocations





9.1.1 Fiscal grants allocation to local / provincial and national government

There is an *equitable* share grant disbursed to local government / provinces / and national government. Currently Treasury is working with all three levels of disbursement to get both the budgeting and the financial accounting of expenses for such grants working. With national offices, provinces and some of the local government offices, Treasury can on a monthly basis determine where they are in terms of their budget to expenditure ration.

There are problems with financial accountancy and getting the reports to provincial government who has to account financially to national government and then treasury. For expenditure on provincial budgets, the Premier is accountable, who further has to account to Treasury. Also local government receiving money from the national budget must also account to treasury. Secondly there is a *conditional grant*. Each of the conditional grants come with very tight planning and indicators and hence conditions. The third is the *grant in kind*. Cabinet controls this. The accountability related to these grants are difficult. This is a top down grant and those below who have to do the work have minimal motivation to account for action. The gap between who has to account for the work and cabinet is too wide.

Some grants are disbursed from national government. Others are disbursed from provincial and local government levels. There is funding at all levels of government for NGO's. The money is there, but the disbursement of it is relatively complicated. Money has to be disbursed on a strict budget where objectives, activities and indicators are stipulated, which then needs to be approved. Every cent needs to be accounted for. This, however straightforward as it seems, is extremely difficult for departments, Directorates, provincial governments and local government. There are many attempts by departments to by-pass the fiscal mechanisms in place. This often creates a great deal of tension with Treasury.

The disbursing mechanisms by various departments are not consistent. The following outlines examples of mechanisms utilised:

- *Direct funding to the NGO / CBO* based on the appraisal and approval of the application prior to implementation of the project. The successful applicant will have to account in a financial and narrative report. Often provincial and local government carry out monitoring visits.
- *Departments have set up Section 21 Companies* to disburse funds.
- *Departments have utilised existing institutions* to disburse funds on their behalf.
- *Departments have requested that organisations tender* through provincial and state tender Boards, who are in turn governed by the State Tender Board Act.
- *A Department has put in place a pre-selection process* where NPOs are assessed and then are listed for tenders.

Even by Treasury's own admittance, the procurement policies, which were recently amended - doing away with boards and giving national, provincial and local government the responsibility and authority to assign contracts - is still not NPO friendly. It is difficult to ascertain if the NPO Directorate played a role in influencing this policy to make it more NPO friendly.

9.2 Intergovernmental Relations with the NPO Directorate

The Directorate has more recently started looking at how they can formalise their partnership with other regularity bodies affecting Non-profit Organisations. So far, cooperation exists with the South African Revenue Services and their Tax Exemption Directorate. Also, partnerships exist with the Department of Agriculture and their registrar of Cooperatives. Further work needs to be done with the Department of Trade and Industry (for Section 21s) and Department of Justice (for non-profit Trusts). It should be noted that initial meetings and a general cooperation does exist with these departments, although these relationships are not formalised.





9.2.1 The Department of Trade and Industry

The *Department of Trade and Industry* has a Directorate that deals with consumer affairs, consumer protection and concurrent jurisdiction with provinces. The DTI has found that there is a lot of NGOs that are assisting consumers with consumer issues and debt problems. The DTI, as part of their broader strategy, has found these agencies useful to reach consumers, especially around capacity building initiatives.

Since the project commenced in 2000 the DTI has requested that the NGOs are either NPO registered or Section 21 registered. Organisations must have governance structures in place. Still, as a result of policies that influence the disbursement of funds, the DTI could not get funds out to the NPO Sector. The procurement and tendering process did not bring them any closer to success, as the tendering process is not NPO friendly.

Part of the problem relates to the capacity of applicant organisations, especially when it comes to budgeting, financial management and reporting, as well as project management. To get the money moving, the DTI outsourced grant management to the Micro Finance Regulatory Council. This Section 21 Company manages the grants and the DTI oversees it. This arrangement was flexible and fitted the funding model of the DTI. Still Treasury has questioned this structural arrangement and has requested that the organisation shift its organisational status. Treasury argues that the current arrangement is a violation of the Public Finance Management Act.

The DTI has also proposed the formation of a Trust with funds to be disbursed to the NGO and CBO sector. This will be enacted by a vote of parliament. The purpose is to go to the consumer and provide consumer education and related services. At the moment the proposal has white paper status.

9.2.2 The Department of Agriculture

The *Department of Agriculture (DOA)* has a small fund, which they would like to disburse to CBOs or NGOs or FBOs engaged in food security. They have not had fruitful engagements with civil society and are not clear on the best way to proceed with the disbursement of funds. The previous tendering process, which they undertook, attracted a number of 'chancers' or 'fly by night' organisations. The Directorate did not and still does not now have the capacity to appraise these organisations, both in terms of good governance and in terms demonstrated history and achievements. As a small Directorate in the DoA, with a small number of staff dedicated to the project, it is difficult for them to find a suitable approach to get funds to worthy organisations.

9.2.3 The Poverty Alleviation Fund, Department of Social Development

The *Department of Social Development* has a Poverty Alleviation fund, which it disburses to projects identified by the DSD at provincial level. They have funded over 10 000 poverty alleviation projects. Annually they have funded around 3000 community initiatives. Their allocation from state funding is in the region of R600 million. The DSD has contracted in the IDT to disburse their funds.

The *Department of Social Development* also has grants, which it previously disbursed as social worker salaries to organisations carrying out counselling type work. There is also a fund that for the promotion of the rights of orphaned and vulnerable children through shelters, residential homes and service delivery agencies. These grants are now being disbursed to projects, and will include social worker salaries.

9.2.4 Department of Water Affairs and Forestry

Between 2000 and 2001 the *Department of Water Affairs and Forestry (DWAf)* consolidated their donor grants and called the resulting single fund Masibambane. A requirement of this fund is that 25% of the money is to be utilised by 'non state' organisations, seen as CBOs and NGOs. This money filtered





through to many sectors. Each sector leader was accountable for this money through Masibambane to Treasury.

The nature of the Directorate is shifting from being responsible for dispersing of funds to NGO's directly to dispersing funds to municipalities, who then have to oversee disbursement to local NGO's and CBO's. This Directorate is dispersing the last tranche of funding.

As the situation unfolds DWAF found that there was heavy tension between the municipalities and 'non-state service providers. The NGOs say that they are dying and are not getting the work they are entitled to. The municipalities acknowledge that they are not giving the NGOs as much work as is possible.

The procurement/tendering procedures of most municipalities are not NGO friendly. The DWAF has consequently engaged with municipalities in KwaZulu-Natal, where a more appropriate model for tendering amongst NGOs was piloted. The results and lessons from the pilot will be filtered through to other municipalities around the country. What the pilot put in place was a 'rates only' tendering process. Organisations had to go through a pre-tendering process and if they qualified, they did not need to go through a tendering process again. This system was gazetted in KZN.

9.3 Inter-Governmental Perceptions of the NPO Directorate

9.3.1 Quality of registration

A Directorate, which depends on NPO registration as a first level appraisal of an organisation it intends to work with, indicated that the quality of the registration process was of concern to them. Whilst they were pleased that an NPO has a constitution and a governing body in place as a result of the registration process, they were concerned that the organisation and governing body does not really understand the stipulations of the constitution or the role of the governing body.

"What we question is the quality of the registration. There needs to be a constitution, which is understood (not just signed) on the ground. Office bearers must know what is an AGM and how they should nominate or elect office bearers. This must be understood on the ground" (Interview).

The particular concern was that the NPO Directorate had not gone beyond the administrative functions associated with the registration process. There was little indication of anything being done with regards to capacity building.

Some Directorates needed the beneficiary organisations to be NPO registered before they could distribute funds. In this instance, frustration with the timing of the registration process was experienced. The registration would take an average of three months. This delay interfered with plan time lines of such Directorates, especially if they were abiding to time lines of the fiscal year. The disbursement of funds was delayed and hence the implementation of projects by beneficiary organisations was delayed.

Some Directorates identified suitable beneficiaries and monitored progress of the implemented project at provincial level. The capacity at delivery level was lacking. Questions were asked as to what role the NPO Directorate could play in ameliorating this situation.

9.3.2 Financial Accountability

Some Directorates and/or departments felt that the financial accountability of registered organisations was a critical concern for them. For example, rural NGOs/CBOs experience practical difficulties to spend the money granted. Keeping track of expenditure is difficult. For instance, organisations most





likely use modes of travel where they cannot get a receipt. Organisations have difficulty accessing financial expertise within their own structures, and generally cannot afford an accounting officer to approve their books. They are challenged in this respect when it comes to financial accountability.

9.3.3 Partnerships

Many of the Directorates and/or departments interviewed felt that the NPO Directorate needed to make themselves visible. They need to let other Directorates know what they are doing. The request is that the NPO Directorate must also communicate with other Directorates (within the DSD and in other government departments) on the capacity building activities they are carrying out amongst organisations, so that services do not get duplicated, but are complemented. The NPO Directorate should also communicate around compliance, especially if the organisations fall within a sector of another Directorate, as they may be able to help. The NPO Directorate does not communicate to clients if they need to comply with further registration processes (like ECD for Health and ECD registration).

9.3.4 The NPO Regulatory Environment

Most Directorates acknowledged that it was the government's responsibility to provide an enabling environment and, in particular, a functioning civil society. An enabling environment has to exist for both the well-established NGOs as well as for emerging CBOs. An enabling environment is successful when the sector is not only involved in service delivery, but also in the policy process.

Some Directorates felt that because government pays on invoice and not before the projects commence, NGOs and CBOs are placed in a difficult position, making the environment non-enabling for such projects. There are furthermore issues around procurement, skill shortages at local level and cash flow problems for NGO. The opinion seems to be that Government is not doing enough.

Registration has become a criterion for funding. Most departments require organisations to have an NPO number to receive grants.

Many organisations do not realise they have to comply with reporting standards. Some Directorates felt that the lack of understanding was a failure of the registration process. They felt that the NPO Directorate needs to promote functioning democratic organisations and that they need to go beyond registration. They need to assess and assist with corporate governance. Where the NPO Directorate does not have the capacity, they must seek to form partnerships with other institutions.

9.3.5 The Value of the NPO Act

The NPO Act has provided an opportunity for organisations at community level to modernise and institutionalise. Many Directorates thought that this was a tremendous achievement in itself. Some Directorates felt that the NPO Directorate has not added any value to the sector.

Directorates have felt that the NPO Directorate has raised the profile of the NPO sector and has broadened the space for civil society. The NPO Directorate has brought legitimacy to the sector. The Directorates role in this regard is to facilitate growth of the NPOs.

9.3.6 Funding

Several government Directorates that were disbursing funds felt that they had to recreate the wheel around project cycle management of their projects, creating appraisal and monitoring tools as well as evaluation systems. They felt that the NPO Directorate should have a generic model of funding which could be shared.





Where funding mechanisms are shifting within government, from national to provincial or to local or from salaries to project funding, those interviewed indicated that the NPO Directorate should assist, either themselves or potential beneficiaries on the ground to get funding.

In addition to registration, a Directorate felt that the NPO Directorate should ensure that organisations are what they say they are and the Directorate should do this by carrying out periodic appraisals of organisations. Whilst the registration is appreciated, the NPO Directorate indicated that due to limited capacity, it was difficult for them to appraise organisations.

The NPO Directorate should also play a role to get procurement policies to be more NPO friendly. They should also play an advisory role to other Directorates and/or departments on how they should proceed with NGO/CBO partnerships.

9.3.7 Recommendations

The following recommendations emerged from other government departments:

- If the NPO Directorate can develop programmes of capacity building in these organisations especially on management, project management and marketing and helping them to tender better, the NPO Directorate would have added more value.
- The NPO Directorate needs to take responsibility to engage government departments around the Act, its applications, its implications and challenges."
- The NPO Directorate should promote a quality registration and not just a paper trail. They should ensure that the quality of registration is genuine and that people on the ground understand the registration.
- The NPO Directorate should develop generic issues such as funding management tools, training, monitoring and evaluation for other government agencies that disburse funds.
- The sector database must be made available to government departments working with specific kinds of NGOs.
- The NPO Directorate must make available resources that are relevant to the sector, and hence save other departments sourcing such documentation.
- The Directorate needs to be more visible and play a role like treasury.

9.4 NPO Co-ordination and Partnerships

9.4.1 Provincial Coordination

The Directorate in light of its own limitations is considering ways to use provincial government to further the aims of the NPO Act. The most obvious route is through the Provincial Departments of Social Development.

The NPO Directorate is considering ways in which the provinces can play a more prominent role in the appraisal and monitoring of projects. The Directorates seeks from the provinces a more supportive role in assisting organisations to interact and comply with the legal framework that governs them. Such a role cannot take place without training, on the job capacity building, monitoring and mentoring.





The role of the provinces will further be articulated within the developmental framework that the Chief Directorate Implementation and Support is conceptualizing as an approach to community development. This will inform the programmatic work of the department.

The Directorate is partnering with the provinces in conducting Information Sharing workshops for organisations as well as providing the same workshop to officials with the intention of beginning a process of capacitation of provincial government officials to support organisation in their endeavour to register legal entities.

9.4.2 Donors

No formal partnerships have been established with the NPO Directorate and donors. Recommendations to strengthen the relationship between donors and the NPO Directorate were expressed. These include:

- Engage with donors and the funding environment.
- The NPO Directorate should have an event annually with donors. It needs to be a little more up front with donors. At such an event, the Minister should make a statement on the overall funding scenario and report on activities of the Directorate.
- The Directorate could try to align some of the requirements with foreign donor governments.
- There needs to be a closer relationship between the NPO Directorate and the NDA. They need to look at how they can work together, and how to avoid duplication and overlap.
- The NPO Directorate should play a more influential role with donors and NPOs to access funding.
- The Directorate could do more on the issue of accessing funds from the SETAs.





10. SUMMARY OF FINDINGS

10.1 Insufficient Resources and Capacity for Implementation of the NPO Act

While the Assessment found that government as a whole has become significant in its breadth of support and engagement with the NPO sector, the resources and implementation capacity for the NPO Act is severely lacking. The financial resources allocated for the implementation of the Act are insignificant when compared to the size, scope and vibrancy of the NPO sector on the one hand, and the complexity of the NPO Act on the other. The allocation of responsibility to a Directorate within the Department of Social Development, and the limited financial resources made available to this Directorate, have - in the researchers' opinion - constrained the potential impact of the Act.

Currently there exist 14 permanent positions in the NPO Directorate, with additional capacity provided by 2 contract staff, and 3 interns. Of this number 9 positions (64%) are administrative, positioned below Level 9 on the public sector scale. Of the four management positions, two are Assistant Directors, one a Deputy Director, and another a Director position. The Directorate's budget allocation for 2003-2004 was R7 516 000, an increase from R6 696 000 for 2002-2003. Of the 2003-2004 amount 94% was expended by the Directorate.

Some observers have noted that the Directorate is hardly better resourced than some of NPOs whom it is intended to serve. Given the steady increase in applications for registration from 2000 onwards, it is clear that the current resources available to the NPO Directorate are inadequate.

10.2 General Impact

Given the enormous amounts of energy and input into the formation of the NPO Act, it is somewhat surprising that the overall impact of the Act has been uneven, and in some cases quite limited. The study has found that the impact of the Act has been high in the administrative and regulatory environment, somewhat less in the establishment and maintenance of standards in the NPO sector, and quite limited in the overall scope of government-donor-NPO relationships.

In the administrative and regulatory environment, the Assessment has found that there has been significant impact on a growing emergent sector of Voluntary Associations registering as NPOs (organisations that could be described as CBOs⁴⁷), who tend to be more localised and less capacitated. These organisations have generally seen the NPO Act and registration with the DSD as a first point of reference for their formal establishment, and have generally followed the stipulations and guidelines issued by the DSD in their operation and formalisation. Registration as NPOs has meant the first step for many of these CBOs into the formalised development sector, enabling them to engage government and donors on a more structured basis, and conveying a measure of status, which enhances their ability to secure structured support from donors and government. This measure of status and the associated ability to engage with the environment around them is dependent on a complimentary responsibility on the part of organisations themselves to comply with basic reporting standards.

Other types of organisation, registered as Section 21 Companies, Trusts, or even Cooperatives have been impacted upon in a less direct manner. For these organisations NPO registration is in the main an administrative process necessary to pursue certain options and opportunities, but is not the first option for establishment of the NPO as a legal entity. Many of these categories of NPOs have

⁴⁷ Different definitions of CBOs are used in literature on the NPO sector. For the purposes of this assessment a CBO is referred to an organisation that brings together constituencies at a grassroots level to take action and make representation on issues of common interest. This definition therefore relates more to *locality and target group* than to actual size of the organisation.





indicated that the registration was required by another agency, and were therefore obliged to register, or simply that they thought it was compulsory to register with DSD.

Of particular concern is the limited extent of awareness of and engagement with the NPO Act by a range of key stakeholders engaging with the Non-Profit environment. It is significant to note that the majority (twelve out of sixteen) of the range of funding organizations interviewed in this assessment do not require NPO registration in order to fund an organization.

The assessment has found that national government departments are generally unaware of the content and prescripts of the NPO Act, and have structured their own engagement with NPOs without much impact from either the Act, or the Directorate. Similarly, this assessment found the impact of the Act and the Directorate on the Corporate Social Investment (CSI) sector has been minimal, with most of the CSI donors having extremely limited knowledge of the Act, and not having amended grantmaking practices and criteria to any extent. This is despite the contention found in the CSI Handbook that 50% of CSIs required NPO registration.

Private donors, state and bi-lateral donors displayed more awareness of the Act, although the extent to which the Act has impacted upon their grantmaking practice varies. While NPO registration may be required in some many instances, the assessment also found that for larger NPOs, the status of this form of registration was considered less than that of Section 21 registration, or the establishment of a Trust. The assessment also found an inconsistent application of the requirement for NPO registration, and that in some cases registration was not, in fact, a requirement. A surprising example of this is the National Lotteries Distribution Agency, who will provide grants to NPOs who are registered as Section 21 companies, but for whom registration as a NPOs means very little.

A clear limitation that has emerged from the assessment with respect to impact is the lack of clear definition of the benefits of NPO registration. The primary motivations for registration by organisations have been because they thought it compulsory, from an expectation of increased funding, and the potential for taxation benefits. The assessment has found that in all respects the actual benefits accruing to NPOs have been limited, and those that have benefited have tended to be larger organisations more often registered primarily as Section 21 Companies or Trusts. Other benefits, such as improvement of standards of practice have not featured highly on the perceptions of NPOs. Many of especially the smaller, community-based organisations struggle to comply with reporting standards and in fact regard it as a bureaucratic burden. One can speculate as to why this is so difficult for small organisations. A general lack of management capacity is a likely cause of organisations' inability to report. When asked what would make the NPO environment more enabling, many organisations (collectively around 25%) in the Voluntary Associations registered as NPOs survey indicated that they needed help with organisational development, i.e. training in how to manage their organisation. It has also been noted that a simplified way of reporting is accepted by the NPO Directorate (an affidavit stating that no money flowed through the organisation) and bank statements. The lack of reporting by smaller organisations may look different if it becomes more generally known that such a simplified way of reporting is possible.

In light of this, the sustainability of the impact of the NPO Act remains questionable over the longer term. If the benefits are unclear, and there is a continuation of limited engagement by a range of governmental and donor agencies, NPOs will reconsider the motivation for registering, especially in the face of the perceived administrative burden of registration and compliance.

A key feature of this issue is the status accorded to registration, which the assessment found to be in question. In the perceived absence of effective monitoring of compliance to basic standards, donors and NPO networks are beginning to question the value of the NPO registration process in assuring the existence of adequate systems of governance, management and transparency. This process will inevitably lead to the use of parallel systems of monitoring, either directly through the use of





assessments, or through proxy registration processes, for example Section 21 registration. Put simply, donors will have indicated their lack of trust in NPO registration if they find widespread lack of compliance with the minimum standards set by the NPO Act and Directorate.

10.3 Theme 1: Enabling Environment

Perception of enabling environment differs from categories of respondents. South African government departments, perhaps not surprisingly, feel that an enabling environment exists for NPOs in South Africa. They point to policy features that enhance the potential for NPO engagement in policy, planning, and implementation of government programmes, as well as enhanced opportunities of government funding of NPOs. They also feel that a climate has been created for constructive engagement between government and the Non-Profit Sector. This is significant, considering the limited awareness of the NPO Act by these respondents, and their limited engagement with the Directorate. In effect, they feel an enabling environment exists without any acknowledgment of the influence of the NPO Act on this environment.

In the main, donors feel there is an enabling environment for NPOs in South Africa, although there is an important distinction in responses. Donors that were established by the South African government, which were most likely to say that there is an enabling environment, while local South African grant-making organizations (that work most directly with community based and grassroots organizations) were most likely to say that there is not an enabling environment. Those donor organizations that expressed appreciation for the current enabling environment in South Africa focused predominantly on the legal regulatory environment. Ironically, the CSI programme representatives that were interviewed agreed that there was an enabling environment, but tended to equate a strong enabling environment, with an environment that is favourable to the corporates themselves.

Most of the CBO participants felt that the environment for civil society participation in the general development arena in South Africa has improved. They based their assessment on a few of factors, including that a number of community based organisations (CBOs) have increased since the introduction of the NPO Act, and some of the smaller community based organisations and structures have managed to graduate to a more organised and formalised status. Funding seems to be the biggest issue taken into consideration by organisations when it comes to considering their environment. Improving access to funding in some form or another was the answer consistently across all sample groups when asked what they think must be done to make the environment more enabling. Apart from funding, capacity building or organisational development was cited as a concern, as well as the ability of organisations to influence the policy making process.

However an opposing view does exist that an enabling environment does not exist for civil society in this country. Although major inroads have been made towards providing a supportive legislative framework for voluntary and civil society organisations, and in particular through the promulgation of the NPO Act of 1997 and others such as the Lotteries Act and the NDA Act, the effects of these interventions remain a 'paper exercise' in the face of most provincially based NGOs and CBOs.

Reasons given for this opinion included:

- Decreasing direct external and locally based donor support to the sector
- A number of NGOs are folding/closing down
- High turnover of staff from the sector to the public or private sector
- Lack of a clear role of the sector in the current development context

A consistent finding of the Assessment was the perception that a major problem with the NPO Act and its implementing agency, i.e. the NPO Directorate, is that information about the NPO Act does not reach its intended beneficiaries. As such many smaller voluntary and civil society organisations do not reap





the potential benefits of registration. An additional concern was that the Directorate has played a minimal role in facilitating programmes and approaches to establish a more consistent and comprehensive approach to NPOs, and that this will undermine the process of enhancing an enabling environment.

10.4 Theme 2: Administrative and Regulatory Framework

The Assessment has found the regulatory environment to be somewhat inconsistent and fractured, leading to a reduction in overall efficacy and impact of the NPO Act. Respondents have pointed to the need for synchronisation of legislation regulating NPOs, and addressing of the limited coordination between the regulatory agencies of government.

Also, the assessment found clear problems with a "one size fits all" approach to NPOs inherent in the NPO Act. The assessment has found that the lack of recognition given to different categories of NPOs affects them in different ways. Small emergent CBOs are often unable to meet the minimum standards set by the Act and the Directorate, and as a result struggle to maintain compliance. As discussed above, one can speculate as to why this is so difficult for small organisations. A general lack of management capacity is a likely cause of organisations' inability to report. It has also been noted that a simplified way of reporting is accepted by the NPO Directorate (an affidavit stating that no money flowed through the organisation) and bank statements. The lack of reporting by smaller organisations may look different if it becomes more generally known that such a simplified way of reporting is possible.

Larger, sophisticated NPOs feel the NPO registration adds to the administrative burden, while undermining their status with certain donors. As a result, respondents have identified the need for a regulatory environment that specifies different categories of NPOs, and aligns standards and regulation according to these.

An example of such a system could be summarised as follows:

Category	Characteristics of NPO	Example of Appropriate Standards	Entity and Responsible Agency
4	NPOS with annual revenue of above R250 000	Elected Board Annual narrative reporting Annual Audited financial statements Full Range of Quality Management Systems	Section 21 and Trust automatically qualify for DSD Category 3 status Monitoring conducted by DTI / DoJ or possibly proposed independent authority. DSD registers and monitors NPOs in this category not registered as S21 or Trusts
3	NPOs with annual revenue between R50 000 and R250 000	Elected Board Annual narrative reporting Annual audited financial statements Limited Quality Management Systems	DSD registers and actively monitors compliance through reports and due diligence visits
2	CBO structures with annual revenue of between R50 000 and R150 000	Elected board. Annual narrative reporting Financial statement attested to by accounting officer.	DSD registers and monitors compliance through reporting





Category	Characteristics of NPO	Characteristics of NPO	Characteristics of NPO
1	CBO structures with annual revenue of less than R50 000	Elected board. Annual narrative reporting by simple template. Financial statements attested to by accounting officer OR affidavit stating that no money has flowed through the organisation along with bank statements to support.	DSD registers and monitors compliance through reporting.

A tiered system as the one suggested here is not a new idea. A similar tiered system has been postulated when it comes to the regulation of burial societies in South Africa. Bester *et al.*⁴⁸ recommends that: "Consideration be given to the creation of a regulatory framework that provides for a stepped compliance function (i.e. progressing from self-regulation to full compliance with the Long-term Insurance Act." A tiered registration and reporting system for charities exists in the United Kingdom as well, as administered by the Charities Commission in terms of the Charities Act of 1993.

The Assessment has found the benefits to NPOs to be limited, and that this is at odds with high expectation amongst NPOs. Smaller NPOs, especially CBOs, also bemoan the administrative burden of registration and compliance with the Act. This could be a function of the perceived high cost of compiling the necessary reports and the lack of capacity within organisation to maintain adequate standards. This point is somewhat reflected in the limited levels of narrative and financial reporting found in the survey of NPOs, indicating a general difficulty amongst NPOs to meet their reporting requirements.

Despite this, awareness of the NPO Act and the registration process is increasing, and there are growing numbers of registration of NPOs. This in itself reflects the emergence of a large number of localised, community-based structures established for public benefit. Administratively, the increase is creating further difficulties for the NPO Directorate, which is faced with capacity limitations to meet the rising demand.

It furthermore seems as if the issue around the registration of Cooperatives as NPOs is an indication of certain amount of confusion within the sector with regards to appropriate organisational forms. This trend could also be seen as an indication of the ability of organisations to use different legal entities for different purposes, primarily for accessing funding from different sources. The lack of coordination between the various pieces of legislation that affects this sector makes such a situation possible. The problem with this is that it represents an adaptation on the part of CSOs to the funding environment, as opposed to an adaptation of the funding environment to CSOs and their needs. This issue draws the ability of CSOs to respond to *needs in their* communities into question, especially if organisations then respond primarily to *funder* stimuli.

The centralisation of registration and administration has been criticised from a number of quarters. NPOs not situated in Gauteng felt strongly that the registration process was made more difficult by the fact that the National DSD was solely responsible for registration. Provincial officials and NPO networks also reflected some frustration with the centralisation, as they felt that it compounded a problem of parallel communication and information processes. In effect they argue that they inevitably assist and facilitate NPOs through their registration processes, but are not formally consulted or included in the process by national DSD.

⁴⁸ Bester, H. et al. 2004. "Making Insurance markets work for the poor in South Africa - Scoping study". In *Genesis* Vol. 135.





10.5 Theme 3: Standards of Governance, Transparency and Accountability

A particularly striking feature of the NPO sector emerging from this Assessment is the generally weak capacity of NPOs to manage their affairs, and to deliver quality services. This situation poses the greatest threat to efforts to maintain high standards across the sector.

The NPO Directorate currently seeks to improve standards through the production of good practice guides and standardised templates, and through desktop monitoring of reports. While the survey indicates that many NPOs appreciate these measures, and that they have incorporated some of the documents in questions, a number of gaps and criticisms remain.

The Assessment has found that the status of NPO registration, and the quality of organisational practice presumed, is widely questioned by a variety of NPO stakeholders. Donors, NPOs themselves, and government officials working with NPOs have expressed misgivings on the levels of compliance and standards of governance, operation and accountability in NPOs who have successfully registered. There is a general sense of the limited practical implementation of good practice in the NPOs themselves. In effect, what seems to be happening is that NPOs adopt the templates and format documents, without taking the organisation through the processes necessary to entrench the procedures and practices outlined therein.

The outstanding feature of the NPO sector is the capacity constraints that exist. A particular feature that has emerged is the poor standards in financial reporting. An assumption made is that poor financial reporting is a result of poor financial practices. There is a need for addressing this capacity weakness, and monitoring and enforcing compliance to minimum standards of financial management.

Apart from the required narrative documents the Directorate does not request further information or monitor governance with Voluntary Associations registered as NPOs. The survey also found that NPOs themselves are reporting limited compliance with reporting requirements, both narrative and financial. If the reporting is limited in value and volume, then the ability of the Directorate to monitor standards is severely compromised. If this situation is to continue it seems inevitable that the value of the registration process as a determinant of quality of practice will be undermined. Consequently, it is likely that donors and other stakeholders will question the viability of the Directorate to ensure minimum standards for Voluntary Associations registered as NPOs.

This poses a huge challenge for not only the Directorate, but the entire sector and its stakeholders. It is imperative that some form of coordinated monitoring of compliance to basic standards and documenting of good practice are developed for the sector, especially across the various registration procedures and legal entities. If this is not addressed, it seems clear that the legitimacy gap between NPO registration on the one hand, and Section 21s and Trust on the other, will increase and lead to further inequality in the NPO sector.

The Directorate has also attempted to address standards in the past through workshops and road shows, conducted with a range of NPOs in different provinces. These have appeared to have had limited impact, as they have not been specifically targeted to categories of participants, and the numbers of participants are inevitably a small percentage of NPOs.

More recently, however the Directorate has made its first concrete intervention in the Early Childhood Development (ECD) sector. Through a partnership with the ECD Congress the Directorate aims not only to ensure that those service organisations are able to and do register, but also that they are able to and do report on progress annually. The Directorate also participated in HIV/AIDS meetings that were held and issues discussed pertaining to capacity building and sharing of information.

This development offers some indication of a more strategic approach to standards setting and promotion - strategic partnerships with networks, other government departments and donors. A coordinated effort is the only measure that affords some opportunity of ensuring sector-wide compliance with minimum standards.





10.6 Theme 4: Information

There has emerged a general consensus amongst all stakeholders that the current collation and dissemination of information is inadequate. Consistent criticism has been directed through the Assessment at the current form of information collated and made available on the NPO sector. Two specific emerging themes have been consistent in this criticism:

- The current information does not provide important monitoring information on the scope, characteristics, and trends within the NPO sector
- The current information does not provide information and transparency regarding the awarding of government grants to NPOs

Currently, the Directorate makes information available in the form of guides, and the full list of Voluntary Associations registered as NPOs on the web and in written form once a year. However, the details provided for organisations are often incorrect, or of limited value due to a lack of organisational information. The current information system seems adequate specifically for the purposes of registration, but seems to offer limited opportunity to provide more significant monitoring data.

A specific area of concern to many NPOs, especially in the health and welfare sector, is the lack of transparency regarding the awarding of grants to NPOs. The key concern in this respect relates to the potential for inappropriate awards, and perceptions of potential corruption. This weakness is indicative of the general lack of integration of information management across departments and provinces with regard to NPOs, which presents a clear challenge to a comprehensive approach to NPOs from government.

10.7 Theme 5: Promoting a Spirit of C-operation and Shared Responsibility

The Assessment has found the role of Directorate to have been limited in building partnerships between government, donors, and NPO networks. There has been significant criticism from national NPO networks in particular, who allege that the Directorate has in effect circumvented them in their activities with NPOs. Many of these have indicated that they inevitably end up supporting these same NPOs and NPO members in their engagement with the directorate.

A critical component of cooperation is the synchronisation of procedures and programmes between departments, especially with registration and disbursement schedules. This often has adverse effects on NPOs. For example, some government departments needed the beneficiaries to be NPO registered before they could distribute funds. In this instance, frustration with the timing of the registration process was experienced, as a minimum the registration would take three months. This interfered with plan time lines of such Departments, especially if they were abiding to time lines of the fiscal year. Disbursements of funds were delayed and hence implementations of projects by beneficiary organisations were delayed.

Of particular concern is the lack of provincial coordination regarding NPO programmes and regulation. Some Departments used provincial departments to both identify suitable beneficiaries and to monitor progress of implemented projects. In light of its own limitations the NPO Directorate is considering ways to use provincial government to further the aims of the Act. The most obvious route is through the Provincial Departments of Social Development. Given the overriding challenge making 'development' interventions in a predominantly 'welfare' approach, the Directorate is considering the provinces to play a role in the project officer to appraise and monitor projects. The Directorates seeks from the provinces a more supportive role that ought to play in assisting organisations to interact and comply with the legal framework broadly. Such a role cannot take place without training, on the job capacity building, monitoring and mentoring.





11. RECOMMENDATIONS

11.1 Recommendation 1: Minister to Address the Fragmented Regulatory Framework

This Assessment has found a fractured regulatory environment, leading to duplication, confusion and inefficiency for the establishment and registration of NPOs. In effect, the current environment will lead to inevitable variances in the perceived status of NPOs, and undermine over time the status accorded to these legal entities. In addition, the lack of integration between the regulatory agencies reinforces unnecessary duplication of resources. It is a strong recommendation from the assessment **that a process to reconcile the three current forms of registration for NPOs be initiated by the Minister**, leading to appropriate legislative amendments.

The Minister should facilitate a process to review and align legislation to allow for an **integrated regulatory framework** that allows for consistency within the legal framework for registering NPOs. This will require high-level political facilitation between the relevant Ministries for Trade and Industry, and Justice. The purpose of such facilitation should be to redefine the NPO Act, and other relevant legislation, to establish a single legislative mechanism for registering NPOs. The following steps need to be undertaken:

- (i) Based on agreements between the Departments of Social Development, Trade and Industry, and Justice, necessary amendments should be made to the NPO Act. In particular the Act should be revised to address sections that could create confusion (see, for example, *Appendix 4*).
- (ii) Similarly, the Companies Act should be amended to reflect the integration of registration and reporting systems for each Department.
- (iii) The Departments of Social Development, Trade and Industry, and Justice establish specific agency agreements for the integration of registration and reporting systems and information, and possibly consider jointly setting up an independent authority to deal with non-profits and issues relating to them.
- (iv) Immediate measures should be taken to initiate deregistration of Cooperatives from the NPO register. Cooperatives should be given a limited time span within which they should deregister from the Registrar of Cooperatives, or face deregistration from the NPO register. In effect, they need to choose the appropriate organisational form for their purposes and functioning, and register with only the appropriate agency.

11.1.1 Additional Measures

a. The Minister of Social Development Should Facilitate Restructuring of the Political and Administrative Responsibilities for Implementation of the NPO Act

The Assessment has identified the range of objectives and responsibilities set out in the NPO Act, and has reflected the need to **reconsider different responsibilities for implementation of the objectives of the NPO Act**. In particular the assessment has found clear limitations in the ability of the NPO Directorate to strategically engage the NPO sector, government and donors in a manner designed to enhance the enabling environment for NPOs. This aspect requires the creation of a space for dialogue, and a structural mechanism for coordinating and monitoring overarching levels of agreement. These responsibilities are clearly beyond the scope of the NPO Directorate, and extend beyond its current role, functions, and capacity - which are largely focused on the administrative function of registration.

Given this limitation, the following recommendations are made:

- (i) To establish a high-level political responsibility for coordination and monitoring of the NPO Act





across the NPO sector, government, and donors. The appropriate mechanism for this would be in the form of a tripartite mechanism, which ensures dialogue and accountability without the danger of control. In effect, NEDLAC provides an example of such a structure. Alternatively, a high level political office - in the Presidency, for example - should be considered to provide the foundation for overall government engagement with the sector on matters of policy and the enabling environment.

- (ii) The institutional structure for the administration of the NPO Act should be reviewed and restructured. Specifically, an appropriate institutional structure and location should be implemented to allow for efficient administration of the range of functions outlined within the NPO Act. If the responsibility for implementation and administration of the NPO Act is to remain in the Department of Social Development, it is recommended that the responsibilities be located in a Chief Directorate, with Directorates responsible for Registration, Standards, Monitoring, Communication & Information Management, and Strategic Partnerships.

11.2 Recommendation 2: Revise the Act to Allow for Differentiated NPO Registration

The Assessment has found that a "one size fits all" approach to NPO registration is having negative consequences on the current NPO environment in a number of ways. For small CBOs the current registration requirements and standards are onerous, and not necessarily within their current capacity to comply. For larger NPOs registered as Section 21 companies, or Trusts, NPO registration is seen as an additional unnecessary burden, which sets in place lower - or inconsistent - standards than those to which they currently comply. Many respondents have noted that NPO registration is increasingly being questioned as a guarantee of capacity to manage grants, and in fact masks the varying capacity between small and large NPOs.

Indications are that a 'tiered' system is undermining consistency in the regulation of NPOs. Registration and compliance in terms of the NPO Act is not effectively administered, which draws the status and legitimacy it is supposed to impart to registered organisations into question. The result is that the bigger, more well-resourced organisations such as Section 21s and Trusts enjoy more status and legitimacy, especially when it comes to funding. These organisations therefore generally enjoy much more of an 'enabling environment' than small, community based organisations.

In light of these two elements it is recommended that the NPO Act be **revised to allow for registration of different categories of NPOs**, which recognises different levels of capacity amongst NPOs. This will allow for more targeted programmes from government, civil society actors and donors, and would set appropriate standards for different NPOs in place.

This revised regulatory environment would require the NPO Act be amended to define clear categories of NPOs and the standards and procedures applicable to these. Legislative authority would have to be created for integration with the Companies Act in the form of automatic registration for NPOs established and registered as Section 21 companies, and Trusts.

11.2.1 Additional Measures

(i) **Provide for Decentralised Facilitation of Registration**

The full administrative process of registering NPOs is currently centralised at national level, which has generated a fair amount of criticism from a number of quarters. A number of respondents have urged a recommendation that registration processes be facilitated at provincial, or even local level. They indicate that this would have a dual advantage: to consolidate relationships between government and NPOs at the level of the province; and, to leverage more consistent knowledge of local NPOs by government officials.





It is therefore recommended that **capacity be established to facilitate and manage registration of NPOs at provincial level**. Such an approach would furthermore make sense when seen in the light of evidence from the Telesurvey suggesting that the overwhelming majority of organisations are based and operate at community level, as opposed to at national or provincial level.

Decentralisation of certain functions regarding registration could also address some of the key capacity constraints experienced by the Directorate regarding the processing of applications, specifically:

- Information regarding application and registration processes are made more accessible to NPOs
- Queries regarding the application process can be dealt with more efficiently at provincial level
- Applicants may complete application forms with the assistance of officials who are more accessible and able to confirm completion to required standards
- Confirmation of receipt of application may be issued immediately to the NPO and registered on a central database
- Queries regarding the status of applications may be processed more efficiently at provincial level

However, many respondents also indicated that capacity constraints in provincial government provide significant challenges for efficient government, and that this may well become an obstacle to NPOs. Two elements must therefore be considered before addressing this recommendation:

- (i) The first is to delineate appropriate functions for provincial departments to implement. Whereas the final registration of the NPO should remain centralised, the provincial department should facilitate the process by conducting the following activities:
 - Information dissemination to NPOs and local government
 - Facilitation of registration procedures through provision of assistance and preliminary processing of application forms until completion to required standards
 - Preliminary assessments of NPOs, and
 - Monitoring of reports
- (ii) That sufficient resources are provided for provincial departments to perform these functions to address problems of "unfunded mandates". This will require that information centres, and help desks be established, although the administration of registration processes may remain centralised nationally. It will also require significant training and systems development be implemented to equip the Provincial Departments to ensure the quality of services, and system integrity is maintained.

(ii) Establish and Maintain a Communication Strategy and Information System

Consistent criticism has been directed through the Assessment at the current form of information collated and disseminated on the NPO sector. Two specific emerging themes have been consistent in this criticism:

- The current information does not provide important monitoring information on the scope, characteristics, and trends within the NPO sector
- The current information does not provide information and transparency regarding the awarding of government grants to NPOs

There has been strong motivation on both points for the **design and maintenance of an integrated Information Management System (IMS) and communication strategy** that will meet both aspects. It is therefore recommended that the DSD design and implement an information strategy to introduce instruments to collect and analyse data relevant to the NPO sector and its stakeholders. This will require the following:

- (i) A revision of the current format of information required of NPOs in the application and reporting formats to include information relevant to the NPO sector and its stakeholders. This information





should include data relating to financial and staff capacity of the NPO, funding sources, services offered and area of operation, and target groups and clients. These could be introduced with simplified information templates or questionnaires. Such an information system would further more greatly facilitate the capacity building activities currently directed at organisations.

- (ii) The establishment of a system for collating information regarding awards and grants made to NPOs by government departments, and government supported grantmaking agencies. This information is predicated on the assumption that all grants and awards are made to NPOs who have registered as NPOs. This will require a high degree of integration between government departments and grantmaking agencies to ensure that information regarding the awarding of government grants to NPOs is recorded and made accessible.
- (iii) A revision of the current information software to allow for the collation, analysis, and dissemination of the information to a variety of media formats.

It is also recommended that the ***current information dissemination and communication strategy and mechanisms be enhanced*** to allow for broad based access and dissemination. The reformatted information collated by the Directorate should be distributed via a variety of media, which should include the following:

- (i) A redesigned web-site allowing for interactive queries and accessibility of data and information regarding NPO registration, and links to relevant sites;
- (ii) An on-line database allowing for query and analysis of data relating to Voluntary Associations registered as NPOs;
- (iii) A "branded" documentation series consisting of brochures, information booklets, and reports distributed to all provincial offices, government departments, and local government offices;
- (iv) Briefing sessions conducted regularly in each province;
- (v) Use of Departmental and public media for dissemination of information regarding NPOs on a regular basis;
- (vi) Utilisation of national networks communication media and distribution channels for dissemination of information.

11.3 Recommendation 3: Allocate Sufficient Resources and Capacity for the Implementation of the NPO Act

Given the extremely limited resources, both financial and institutional, made available for the implementation of the NPO Act, it is not surprising that the Act has been limited in its impact on the NPO environment, and that the NPO Directorate faces difficulties in administering the full ambit of the Act. The key recommendation is therefore that the South African government ***commit much greater resources for the overall implementation of the NPO Act***. The key element of this recommendation is to produce a detailed implementation strategy for the NPO Act, which sets out the key elements of an implementation strategy and defines the resources necessary to implement it.

In the immediate term, this would require a ***significant increase in the current budget and human resource capacity for the efficient implementation and administration of the Act within the Department of Social Development***. This will require immediate availability of resources to secure capacity to address severe capacity constraints within the Directorate, and to address backlogs with regard to applications. With regard to the latter, an action plan is required to allocate appropriate resources and capacity to address existing gaps.

This needs to be further enhanced in the form of increased resources available to a restructured NPO Directorate in future, complemented by upgrading the Directorate into a Chief Directorate with





Directorates responsible for the different components of the Act including: Registration; Standards; Monitoring; Information; and, Partnerships.

The budget resources made available to the NPO Directorate need to incorporate consideration of the following:

- Resources to enable provincial offices to perform a facilitative function for the regulation and monitoring of NPOs. This will be required to address concerns of an "unfounded mandate" - the allocation of responsibilities and functions without ensuring the availability of funds to do so.
- Resources to enable significant communication and capacity building programmes to be designed and implemented for the NPO sector, and local and provincial government, to enable a greater degree of technical competency to meet minimum standards, and to establish constructive partnerships.
- Resources to establish appropriate information management and communication systems for the purpose of collating and disseminating relevant information to NPOs and their stakeholders.

11.3.1 Additional Measures

(i) Allocate Resources and Capacity for a Standards and Compliance Framework

The Assessment has also found that the status of NPO registration, and the quality of organisational practice presumed, is widely questioned by a variety of NPO stakeholders. Donors, NPOs themselves, and government officials working with NPOs have expressed misgivings on the levels of compliance and standards of governance, operation and accountability in NPOs who have successfully registered. If this situation is to continue, then the status accorded to NPO registration will diminish over time, disadvantaging those NPOs who ensure high levels of compliance and quality. This might lead to a situation where NPO registration effectively means little to donors, government departments or NPOs themselves.

It is recommended that a systematic assessment framework be developed across the regulatory agencies, in conjunction with NPO networks and stakeholders. This assessment framework should set out standards to be incorporated in a revised registration framework (see Section 11.3), and the mechanisms for monitoring and assessing standards of compliance. Site assessments, or interviews, could be implemented in conjunction with partner agencies that lead to a form of confirmatory documentation, such as a certificate of compliance or the actual registration certificate indicating the category of compliance. In effect, this assessment framework needs to leverage the capacity and participation of donor agencies, government departments, provincial departments, and NPO networks to collaborate on standards setting and monitoring for NPOs.

Along with monitoring, it is recommended that a strategy for capacity building of NPOs receive urgent attention from the DSD. It is recommended that resources be made available for capacity building of NPOs in the form of information workshops, training of support service providers, and advisory mechanisms. This is necessary to guard against a situation wherein a tiered regulatory environment leads to exclusion of the most vulnerable organisations (i.e. small, especially rural CBOs) because of their inability to comply with basic standards. Such a tiered regulatory environment could furthermore be regarded as an interim arrangement that takes the specific context of South African NPOs into consideration whilst still allowing and encouraging capacity building and organisational development. Such a system would furthermore allow for more specific targeting of organisations for the purposes of capacity building.

It is further recommended that the DSD pursue a strategy to outsource capacity building services for NPOs through appropriate service providers. This will obviate the necessity to build in-house capacity





within the Department, and ensure that services are accessible to NPOs through accredited service providers.

(ii) Role and Structure of the Directorate

Given the recommendation made in this report that the administration of the NPO Act be vested with either a Chief Directorate for NPO Affairs within the DSD, or an appropriate department, there is going to be a need for significant restructuring of the Directorate. This is likely to require a high level decision making process, which may take some time to effect.

In the existing situation, however, The NPO Directorate faces significant challenges with its current structure and capacity. In the first instance a recommendation is that there is a significant increase in the resources made available to the Department for implementation of the NPO Act. However, this should follow a systematic structural review of the systems and procedures governing the workflow of the Directorate, to ensure that resources are directed to the development and implementation of appropriate systems and functions.

This assessment has also shown that in its current role the Directorate has focussed almost exclusively on the administrative process of registering NPOs, at the expense of more facilitative or strategic functions. In light of this there are a number of recommendations:

- (i) The Directorate needs to re-orientate its role to a more facilitative and strategic one that focuses on the promotion of partnerships, establishment of appropriate systems and regulatory frameworks, monitoring and information provision, and the promotion of standards in the sector. To this end, the initiatives to structure partnerships with national networks such as the ECD sector are commendable, and should be encouraged in other sectors.
- (ii) The Directorate needs to consider the option of outsourcing the technical role of registration of NPOs, as have other departments in similar situations.

The Directorate needs to restructure its current structure and capacity to meet its new orientation and functions, as outlined in the recommendations of this report.





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#	Date of publication	Author / Department	Document Name
1.	March 2003	Department of Social Development	Progress Report March 2003
2.	March 2004	Department of Social Development	Progress Report March 2004
3.	1 st October 2003 - 31 st December 2003	NPO Directorate	Quarterly Reports
4.	July 2003 - September 2003	NPO Directorate	Quarterly Reports
5.	April 2003 - June 2003	NPO Directorate	Quarterly Reports
6.	January 2003 - March 2003	NPO Directorate	Quarterly Reports





#	Date of publication	Author / Department	Document Name
7.	October 2003 - December 2003	NPO Directorate	Quarterly Reports
8.	July 2002 - September 2002	NPO Directorate	Quarterly Reports
9.	April 2002 - June 2002	NPO Directorate	Quarterly Reports
10.	January 2004 - March 2004	NPO Directorate	Quarterly Reports
11.	2004 - September	NPO Directorate	Computer Interface / Various letters from the system
12.	September 2004	NPO Directorate	Report for capacity building workshop
13.	March 2003	NPO Directorate	NPO Directorate - Key performance Area: Capacity Building Workshops
14.	July - September 2002	NPO Directorate	NPO Directorate - Key performance Area: Capacity Building Workshops
15.	March 2004	NPO Directorate	NPO Directorate - Key performance Area: Capacity Building Workshops
16.	April - June 2003	NPO Directorate	NPO Directorate - Key performance Area: Capacity Building Workshops
17.	2001	NPO Directorate	Codes of Good Practice for South African Non-profit Organisations (NPOs)
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20.	May 2004	Community Development Directorate	- Conceptual Analytical Framework - Summary report - Emerging Agreements and issues from the strategic Planning of 23/24/25 February 2004
21.	April 2001 - March 2002	Department of Social Development	Annual Report
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#	Date of publication	Author / Department	Document Name
37.	2003	Legal Resource Centre	New Tax Law for South African Non-profit Organisations
38.	2003	Non-profit partnership and the Legal Resource Centre	Submissions to the Portfolio Committee on Finance on the Draft revenue Laws Amendment Bill
39.	1999	Government Gazette	Public finance Management Act
40.	2000	Treasury	Trends in intergovernmental finances 2000/1-2006/07
41.	2004/2005	Minister of Finance	Division of Revenue Bill
42.	1999	DSD	NPO Training and information project: Understanding the Sector



APPENDIX 1 THEME INDICATOR MATRIX



SPECIFIC INDICATORS TO MEASURE PROGRESS OF THE ACT	DEFINITION OF THESE INDICATORS	WHAT TO MEASURE IN REGARD TO THE INDICATOR	HOW TO MEASURE IT	INSTRUMENT REFERENCE
Objective 1 "Creating an Enabling Environment"				
1. Enabling Environment	The extent to which an enabling environment for NPOs has been established in South Africa	<ul style="list-style-type: none"> - Does an enabling environment exist for NPOs in South Africa? 	Perceptions of role players	Telesurvey: Q29 - Q39 Schedule 1: Q1 Schedule 2: Q1 Schedule 3: Q1 Schedule 4: Q1
2. The State and the enabling environment	Has the state met its responsibility to contribute to provide a supportive environment for non-profits as stipulated in Chapter 2 (3) of the Act?	<ul style="list-style-type: none"> - Has the state done enough? What else is feasible for the state to do? - The extent to which sectoral policy, programmes and mechanisms exist to support NPOs to operate effectively? 	Identify role-players in non-profits sector and Assessment their policies i.e. DSD, DTI, Donors, SARS, Master of the Court, DoA etc	Telesurvey: Q33 - Q39 Schedule 1: Q1-2 Schedule 2: Q1 Schedule 3: Q1 Schedule 4: Q1
3. NPO Directorate and the Enabling Environment	Has the NPO Directorate met its responsibility to create an enabling environment?	<ul style="list-style-type: none"> - How has the NPO Directorate monitored and facilitated other organs of the state? - How has the NPO Directorate supported an enabling environment in its own operations and impact? 	DSD Interviews Role Player Interviews Stakeholder focus groups NPO Survey	Telesurvey: Q27 - Q36 Schedule 1: Q2-3 Schedule 2: Q3 Schedule 3: Q1 Schedule 4: Q3
3.1 Knowledge of NPO Act	This indicator looks at awareness, knowledge myths about the Act.	<ul style="list-style-type: none"> - This measures the sample groups' awareness of NPO and knowledge of registration process and knowledge of benefits. We may need to record myths about the Act and inconclusive benefits assumed to be a benefit of the Act. 	This question must be asked to all sample groups.	Telesurvey: Q15 - Q28 Schedule 2: Q2 Schedule 4: Q2





SPECIFIC INDICATORS TO MEASURE PROGRESS OF THE ACT	DEFINITION OF THESE INDICATORS	WHAT TO MEASURE IN REGARD TO THE INDICATOR	HOW TO MEASURE IT	INSTRUMENT REFERENCE
3.2 Knowledge of process of registration	This looks at the awareness of how to go about registering.	<ul style="list-style-type: none"> - This measures awareness of the process of registration and how the respondent will go about it. 	This question is directed to sample groups that are not registered by the NPO.	Telesurvey: Q15 - Q26
3.3 Types of organisation's ease/accessibility to NPO registration process	This indicator measures of chapter 2 # 5 of the Act.	<ul style="list-style-type: none"> - Successful communication with the DSD - Usability and answerability of the questionnaire - Queries addressed successful - Timely and successful response from the DSD 	Sample of beneficiary organisation in accordance to types (agreed typology). This sample group should be drawn from the NPO database as it looks at those attempting the registration process.	Telesurvey: Q15 - Q26
3.4 Benefits received from organisations as a result of registering with the NPO	This measures actual benefits the organisation achieved through the registration process	<ul style="list-style-type: none"> - NPO process helped the organisation to structure it self with a constitution - Legalise its operations - Feel part of a broader NPO sector - Access funding - Improve accountability and reporting - Incorporate codes of good practice - Contribute to a sense of legitimacy 	Sample of beneficiary group in accordance to types, drawn from the NPO database.	Telesurvey: Q27 - Q28; Q38 - Q39; Q8 & Q10 Schedule 3: Q1 Schedule 4: Q2-3
Objective 2 "Establishing an administrative and regulatory framework within which NPOs can conduct their affairs"				
2.1 NPO Directorate institutional systems and capacity	Measures the efficiency? Effectiveness? Functionality? Of the internal operations, capacity in term of numbers and financial commitment and structure of administration	<ul style="list-style-type: none"> - # of staff - Spread of offices - System in place NPO registration (and assessment thereof) - Systems in place for collecting and recording reports 	<ul style="list-style-type: none"> - Internal document Assessment - Interview with sample of staff - Assessment of systems and databases 	Telesurvey: Q18 - Q26





SPECIFIC INDICATORS TO MEASURE PROGRESS OF THE ACT	DEFINITION OF THESE INDICATORS	WHAT TO MEASURE IN REGARD TO THE INDICATOR	HOW TO MEASURE IT	INSTRUMENT REFERENCE
2.2 Level of satisfaction with the current regulatory framework	This measures the NPOs satisfaction with the current regulatory framework.	<ul style="list-style-type: none"> - Are the regulations in place helpful? - Are the regulations adequate? - What needs to be improved? - What is lacking? - Assessment of other regulatory frameworks 	<p>Sample of registered NPOs questionnaire.</p> <p>Sample needs to be sensitive to typology</p> <p>Sample of NPOs deregistered</p> <p>Desk study of other frameworks</p> <p>Interview with key stakeholders</p>	Telesurvey: Q29 - Q39 Schedule 4: Q2
2.3 Opportunities not yet explored to expand regulatory framework	This indicator will measure viable options to broaden or deepen the current regulatory framework of the Act	<ul style="list-style-type: none"> - Examination of other legislative frameworks which impacts on the sector 	<p>In-depth interviews</p> <p>Assessment of documents</p>	Telesurvey: Q33 - Q37 Schedule 3: Q4 Schedule 4: Q3
2.4 Implications of regulatory framework on NPOs	This indicator looks at the context of 'regulations' the NPO finds itself in	<ul style="list-style-type: none"> - Assess inter-governmental relations (DSD; SARS; DTI etc.) 	<p>Governmental interviews</p> <p>Assessment of documents</p>	Telesurvey Q 39 Schedule 1: Q5 Schedule 2: Q1 Schedule 4: Q2
2.5 Extent and structure of inter-governmental relations	This indicator measures the current intergovernmental relations to coordinate the regulatory framework.			Schedule 1: Q3 Schedule 2: Q3
<p>Objective 3</p> <p>"Encouraging NPOs to maintain adequate standards of governance, transparency and accountability, and to improve those standards"</p>				
3.1 Contribution of the Department to maintaining standards	The number of concrete interventions made by the department to contribute to improving standards of NPOs. It also looks at if the department has maintained standards through its regulatory framework and or through the registration process.	<ul style="list-style-type: none"> - Have the interventions had any impact - Who needed help and in what way did the department help them. 	<p>Records of interventions e.g sample of correspondence in NPO files in the Department.</p> <p>Sample of registered NPOs</p>	Telesurvey: Q15 -Q26 Schedule 3: Q1 Schedule 4: Q3
3.2 Increased services offered by DSD to the NPO sector to maintain and improve standards of governance, transparency and accountability.	This measures the ability of the department to monitor, regulate and assist the sector in maintaining standards	<ul style="list-style-type: none"> - The minimum the department does in regard to maintaining standards - What does the department monitor electronically or manually? 	<p>Assessment of documents</p> <p>Sample of beneficiaries</p>	Telesurvey: Q25 - Q26 Schedule 3: Q1 Schedule 4: Q3



SPECIFIC INDICATORS TO MEASURE PROGRESS OF THE ACT	DEFINITION OF THESE INDICATORS	WHAT TO MEASURE IN REGARD TO THE INDICATOR	HOW TO MEASURE IT	INSTRUMENT REFERENCE
3.3 Increased capacity and capability in the Department to broaden services	Based on the internal assessment carried out in sub objective 2.1 - an assessment of what the internal capacity is to monitor current services and to offer additional services / literature / awareness	<ul style="list-style-type: none"> - Who areas are logical extension / expansions for the department. - Will extra personal make a difference or will training make a difference? 	Staff / department official interviews Key stakeholder interviews	Telesurvey: Q38 - Q39 Schedule 1: Q4-5 Schedule 4: Q3
3.4 The Department's ability to utilise opportunities and partnerships to ensure standards of NPOs are maintained.	Examine other programmes and assess partnership opportunities with others carrying out this service to the sector broadly. It also measures the opportunity cost for the department to take on partnerships vis a vie the viability and feasibility for the department to take on meaningful and sustainable services itself.	<ul style="list-style-type: none"> - Who else has programmes in place to assist the NPO sector? - What are the programmes / and sustainable nature of them? - Is their opportunity for partnership with government? 	Key stakeholder interviews Interviews with senior management in the Department.	Telesurvey: Q39 Schedule 1: Q3-6 Schedule 3: Q3
Objective 4 "Creating an environment within which the public may have access to information concerning registered organisations"				
4.1 Assess form and process of data captured	The indicator measures the form of data collected and how this is captured	<ul style="list-style-type: none"> - What is the nature of data collated presently - How useful is this data - What other forms of data can be collated 	Assessment of data-bases DSD personnel interviews Key stakeholder interviews	Schedule 1: Q4
4.2 Assess mechanisms of storage and level of accessibility	This indicator assesses the ability of the current systems for public transparency and accessibility and Assessments the legislation for procedures in this regard.	<ul style="list-style-type: none"> - Who can apply? - What information is make available? - Will information or summaries be put on line? - What gets reported currently? - In what way can transparency be ensured without adding 	DSD personnel Key stakeholder interviews Assessment of systems	Telesurvey: Q15 - Q26 Schedule 1: Q4 Schedule 4: Q3
4.3 Assess communication and dissemination strategies	This indicator assesses the current systems for public		DSD personnel	Telesurvey: Q15 - Q20 Schedule 1: Q4



SPECIFIC INDICATORS TO MEASURE PROGRESS OF THE ACT	DEFINITION OF THESE INDICATORS	WHAT TO MEASURE IN REGARD TO THE INDICATOR	HOW TO MEASURE IT	INSTRUMENT REFERENCE
of Department	communication and dissemination and Assessments the legislation for procedures in this regard.	additional costs to the department's budget?	Key stakeholder interviews Assessment of systems	Schedule 4: Q3
Objective 5 "Promoting a spirit of co-operation and shared responsibility within government, donors and other interested persons"				
5.1 The level of the NPO Directorate engagement, networking, sharing information cooperation on projects and partnership with other agencies	This indicator measures the degree of Public-private partnerships, i.e. relations between government, and between civil society and government	<ul style="list-style-type: none"> - An assessment of the various meetings held between various stakeholder and the department covering the period of the Assessment - An assessment of more formal partnerships and cooperation between the department and stakeholders - A question to stakeholders whether the department has met all opportunities that has come its way. 	Sample of the departments records Interviews with government personnel and key stakeholders.	Schedule 1: Q3 Schedule 2: Q3 Schedule 3: Q2 Schedule 4: Q3
5.2 The degree / level of formal relations between government departments	This indicator measures the formal partnership and cooperation between relevant departments	<ul style="list-style-type: none"> - Who is the DSD engaging with? - What are the purposes of these engagements? - Has it contributed to a smooth role out of the Act? - How has the Department facilitated NPO participation in policy arena - How has the Department represented NPOs in policy arena 	Government records Key stakeholder interviews with government officials.	Schedule 1: Q2-3 Schedule 2: Q3
5.3 Opportunities for participation of interested groups in legislative and policy process	This indicator measure the opportunities taken up by the department to liaise with interest groups	<ul style="list-style-type: none"> - How has the Department facilitated NPO participation in policy arena - How has the Department represented NPOs in policy arena 	DSD Interviews Key stakeholder interviews with policy actors.	Telesurvey: Q33 - Q36 Schedule 4: Q2



SPECIFIC INDICATORS TO MEASURE PROGRESS OF THE ACT	DEFINITION OF THESE INDICATORS	WHAT TO MEASURE IN REGARD TO THE INDICATOR	HOW TO MEASURE IT	INSTRUMENT REFERENCE
5.4 Increased specific NPO funding	This indicator measures in what way has the department increased external funding for the NPO work in the directive and sector.	<ul style="list-style-type: none"> - Has the department fundraised for the NPO sector? - What is the proportion of this to the budget? 	<p>Assessment of income generated</p> <p>Assessment of budget</p> <p>Interview of leadership</p>	Telesurvey: Q27 - Q28 Schedule 3: Q1 Schedule 4: Q2-3
5.5 Increased profile of the NPO sector	This indicator measure increased profile of the NPO sector by activities of the department.	<ul style="list-style-type: none"> - Does an awareness campaign or media strategy exist in the department pertaining directly to NPOs? - What budget allocation has been provided for this? 	<p>Interview of leadership</p> <p>Strategy documents Assessment.</p>	Telesurvey: Q15 - Q19 Schedule 1: Q1 Schedule 2: Q1 Schedule 3: Q2 Schedule 4: Q2-3





APPENDIX 2: INTERVIEW LIST

GOVERNMENT

Organisation/Department	Designation
Department of Social Development	NPO Directorate: Acting Director
Panel of Arbitrators	NPO Directorate Assistant Director
Directorate: Poverty Relief	NPO Directorate Assistant Director
Directorate: Children	NPO Directorate Senior Admin
Directorate: Community Development	NPO Directorate Admin Officer
Department of Social Development	NPO Directorate Admin Officer
Panel of Arbitrators	NPO Directorate Administrative Officer
Directorate: Poverty Relief	NPO Directorate Senior Registry Clerk
Directorate: Children	NPO Directorate Registry Clerk
Directorate: Community Development	NPO Directorate Intern
	NPO Directorate Intern
	NPO Directorate Intern
	NPO Directorate Contract Worker
	NPO Directorate Contract Worker
	NPO Directorate Senior Registry Clerk
	NPO Directorate Registry Clerk
	NPO Directorate Senior Secretary
	NPO Directorate Administrator
	NPO Directorate Senior Administrator
	NPO Directorate Arbitrator
	NPO Directorate Arbitrator
	NPO Directorate Arbitrator
	NPO Directorate Arbitrator
	NPO Directorate Arbitrator
	Directorate Director Poverty Relief
	Directorate Director Children
	Directorate Director Community Development
	Free State DSD Office
	Gauteng Office
	Limpopo Office
	Western Cape Office
	KwaZulu Natal Office
Department of Trade and Industry	Director Business Regulatory services and capacity building Project Manager Company Law Review
Department of Water Affairs and Forestry	Deputy Director WSS: Implementation Support Unit
Department of Agriculture	Senior Manager Food Security and Rural Development Director Cooperatives
SARS: Tax Exemption Unit	Project Manager Enforcement Analyst
Treasury Department	Chief Director: Provincial Budget Analysis, Intergovernmental Relations
Ministry of Social Development	Minister's Advisor
CIVIL SOCIETY	
South African Congress for Early Childhood	Programme Manager
SACC	General Secretary
Douglas and Velcich	Tax Consultant
SACBC	Chairman of SACBC Legal Advisory Committee
SACBC Parliamentary Office	Associate for research and community





Organisation/Department	Designation
	Chairman of SACBC Legal Advisory Committee
SANGOCO	Executive Director
Southern African Grantmakers Association	Executive Director
Legal Resource Centre	Attorney
Charities Aid Foundation - Southern Africa	Acting Executive Director
Non-profit Consortium	Executive Director
	Programme Manager
University of the Witwatersrand Graduate School of Public and Development Management (P&DM)	Lecturer
South African Institute of Fundraisers	President
Connections	Ninette Eliasov
CDRA, Cape Town	Sue Soal
Centre for Civil Society, Durban	Professor Patrick Bond
LAMOSAs, Gauteng	Ms Connie Mogale
Gompo Abused Children Centre	
Gompo Welfare for the Aged	
FAMSA, East London	
Eastern Cape Council of Churches	
CDC	
Rural Support Services	
Eastern Cape NGO Coalition	
Gompo Abused Children Centre	
Gompo Welfare for the Aged	
SADEPA	Mr G Perumal
The Valley Trust	Ms E Green
Diakonia Council of Churches	Mr E N Mzila
DDP	Ms Karishma Dayawanth
KZN Christian Council	Mr M L Ngoetjana
KZN Christian Council	Mr D Dziva
Diakonia Council of Churches	Mr E M Victor
Idasa	Mr Nhlanhla Mtaka
SA Girl Child Alliance (Limpopo)	Director
Tlhavhama Training Initiative	Director
Established Comprehensive Youth Organisation	Director
HURESIC	Director
Centre for Community Development	Director
Centre for Community Development	Staff Member
Aids Consortium	
People's Dialogue	
SA Red Cross	
Homeless People's Federation	
Landless People's Movement	
NICRO	
Operation Hunger	
National Council for Child Welfare	
Western Cape Adult Learning Forum	Lin Helme
EJNF	Marie-Louw Roux
Connections	Sakhiwo Toto Gxabela
Bergzicht Training Project	M De Vos
Connections	Ninnette Eliasov
Grassroots Educare Trust	Mareldia Tape
Western Cape Community Development and Advice Centre	Josy Payne





Organisation/Department	Designation
Piere-Viere ECD Training and Monitoring Association	Olive Adriaan
SANGOCO Western Cape Secretariat	Shammema
Ward 65 Paralegal Services, Community Development and General Advice Centre	Abe Braaf
Ward 65 Paralegal Services, Community Development and General Advice Centre	Jeffrey Pass
Phakama Health Community Project	Tiny Skefile
South African Institute of Fundraisers	President
Gompo Abused Children Centre	
Gompo Welfare for the Aged	
FAMSA	
ECPCC	
CDC	
Rural Support Services	
Tandiwe Xala	
SA Girl Child Alliance	
Tlhavhama Training Initiative	
Established Comprehensive Youth Organisation	
Hurisic	
Centre for Community Development	
Aids Consortium	
People's Dialogue	
SA Red Cross	
Homeless People's Federation	
Landless People's Movement	
NICRO	
Operation Hunger	
National Council for Child Welfare	
DONORS	
Umsobomvo Youth Fund	Director PCM
Islamic Relief	Country Representative
SAB	Cooperate Office manager
	Project manager
	CSI Coordinator
CS Mott Foundation	Country Director
CARE SA and Lesotho	SCAPE Coordinator
National Lotteries Board	Player services and Media Liaison
Ford Foundation	Regional representative
National Development Agency	Director Project Management
Nedcor Foundation	Senior Manager
Nelson Mandela Children's Fund	Senior Manager
Anglo American Chairman's Fund	Senior Manager
Foundation for Human Rights	Programme Systems Manager
USAID	Civil Society Programme Officer
Social Change Assistance Trust (SCAT)	Senior Manager
Western Cape Community Chest	Senior Manager
WHEAT (Women's Hope, Education and Training Trust)	Senior Manager





APPENDIX 3: COMPARISON OF LEGAL FORMS FOR NPOS

1. Voluntary Association registered with DSD as a NPO

Department	Legislation	Revision to legislation	Voluntary?	Founding Document	Constituting Members	Trading	Dissolution	Cost	Reports required	How many currently registered?
Social Development	NPO Act of 1997 Taxation Laws Amendment of 2000	NPO Act repealed the Fundraising Act of 1978	Voluntary	Written Constitution	Amount to be specified in the Constitution. Must be 'natural persons' and the ID numbers must be supplied. Independent legal entity, i.e. org can sue and be sued, not members	Organisation may raise funds or invite contributions. Members have no right to funds except as compensation/salary. I.e. 'profit' can be made, but not distributed - must be re-invested	Any funds or property to be donated to another non-profit with similar activities	Free	Annually, within 6 months of the financial year end of the organisation. Financial Statements (I think that the requirement that they be audited was waived) & Narrative report to the NPO Directorate	23 302 at 31 March 2004

2. Section 21 registered with DTI

Trade and Industry	Companies Act of 1973 Taxation Laws Amendment of 2000	Companies Act under Assessment for 2 reasons relating to non-profits: setting up of a monitoring body/	Compulsory	Memorandum and Articles of Association	Minimum of 7 members, minimum of 2 directors. Must be 'natural persons', ID numbers required Independent legal entity	Organisation may raise funds or invite contributions. Members have no right to funds except as compensation/	Any funds or property to be donated to another non-profit with similar activities	Total: approx. R600. R400 for registration if it is done by the organisation itself.	Audited Financials to the registrar of companies at Trade and Industry. The reporting requirements is part of what is under	11 516 at the end of November 2003.
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Department	Legislation	Revision to legislation	Voluntary?	Founding Document	Constituting Members	Trading	Dissolution	Cost	Reports required	How many currently registered?
		tribuna to deal with disputes AND to try and merge with SARS PBO requirements. Making registration and compliance simpler and more affordable				salary. i.e. 'profit' can be made, but not distributed		Approximately R200 to have founding docs stamped by a notary. Will be more if it is done by an auditor or lawyer, which it generally is. The founding docs are difficult to write/compile.	Assessment with the Company Law Assessment . Reporting is strictest for a Section 21 of all non-profits	
3. Trust registered with Department of Justice										
Justice: District of the Master of the Court i.e. one of 5 offices: - Bloemfontein - Grahamstown - Cape Town - Durban - Pietermaritzburg - Pretoria	Trust Property Control Act of 1988 Taxation Laws Amendment of 2000	None	Compulsory	Deed of Trust/ Trust Deed	No limit to amount of trustees, generally between 3 and 12. A company can be a trustee, but highly unusual. i.e. it does not have to be 'natural persons'.	Organisation may raise funds or invite contributions. Members have no right to funds except as compensation/salary. i.e. 'profit' can be made, but not	Any funds or property to be donated to another non-profit with similar activities. Stipulated by trust deed.	About R100 for actual registration. But it being relatively complicated, auditors normally do it, for varying amounts: Auditors snap survey	Supervision over the appointment of trustees, but not over their activities, i.e. the Master requires to be notified of changes in the structure of	These records are in a shambles! Approx. 20 000 - 30 000 total registered trusts per district. Estimate a total of 130 000 - 180 000 registered Trusts





Department	Legislation	Revision to legislation	Voluntary?	Founding Document	Constituting Members	Trading	Dissolution	Cost	Reports required	How many currently registered?
					Not an independent legal entity i.e. if there is litigation, the trustees sue or get sued.	distributed. Basically, Trust is bound by its own Trust Deed in terms of trading, dissolution etc. Not very strictly monitored			the organisation. There need be no audited financial statements unless specified by the organisation's own trust deed.	nationally. They have no way of telling how many of those are still active, and how many are non-profit. Johns Hopkins estimates about 4000
4. Cooperative registered with Department of Agriculture										
Agriculture	Cooperative Act of 1981 Taxation Laws Amendment of 2000??	Coop Bill of 2004 seeking to repeal Coop Act of 1981 to make allowance for more types of coop. Types of Coop recognized by the 2004 Bill (as opposed to two types previously recognized) are: - Housing - Workers' - Social - Agricultural - Financial Services - Consumer - Marketing - Transport	Compulsory	Statute	'Natural persons' may be members. Unlimited amount of members. Minimum of 7 maximum 11 directors. Independent legal entity, i.e. the org (not members) can sue and be sued.	Organisation may trade freely, may buy and sell property, may produce and sell, may generate a profit for distribution to its members at the end of the financial year	Any funds or property over after dissolution to be distributed proportionally to members according to their original contribution to the org.	Total of approximately R240 to register a 'Developing Coop'; Approx. R870 to register a 'Commercial Coop' with the Registrar of Coops at Agriculture.	Audited financial statements to be kept and submitted annually to Agriculture	Approx. 3 000 nationally - approx. 2000 of these have registered within the last 5 yrs.





Department	Legislation	Revision to legislation	Voluntary?	Founding Document	Constituting Members	Trading	Dissolution	Cost	Reports required	How many currently registered?
N/A	Common Law - written or verbal agreement between members. Most suited for small CBOs who don't deal with money or property, like a sports club.	N/A	N/A	A constitution like the one used for NPO registration with DSD, although a verbal agreement is also recognised (problems when there are disputes)	Independent legal entity, i.e. org can sue and be sued.	Same as other types of nonprofit	Same as other types of nonprofit	N/A	N/A	Johns Hopkins estimates 53 000 VAS active nationally
4. Cooperative registered with Department of Agriculture										





APPENDIX 4: BODY CORPORATE STATUS UNDER THE NON-PROFIT ORGANISATIONS ACT

This document was compiled by the NPO Impact Assessment Reference Group, and serves as a summary of the current confusion that exists within the NPO Act in relation to the status of a registered non-profit trust.

1. Three kinds of nonprofit organisations:

The NPO Act provides for the registration of three kinds of legal entities. These are defined in the Act as being trusts, companies or other association of persons that are established for a public purpose and the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered. These entities are commonly referred to as non-profit trusts, section 21 companies and voluntary associations.

2. Registered vs not registered:

Prior to registration these entities are referred to in the Act as nonprofit organisations and should they become registered in terms of the provisions of the Act, they are referred to as registered non-profit organisations. The Act therefore draws a distinction between NPOs being registered and those not registered.

In order for a nonprofit organisation to become registered it must comply with the requirements of sections 12 and 13 of the Act. Section 12 lists a number of matters to be dealt with in the founding document of the non-profit organisation (unless the laws in terms of which a nonprofit organisation is established or incorporated provides for it).

3. Requirements for registration:

It is only once a nonprofit organisation complies with all the requirements of section 12 and 13 that it can become a registered non-profit organisation. If any of the matters listed in section 12 are not covered in terms of the constitution (or the relevant laws) than the organisation cannot become registered. No discretion is afforded to the Directorate in this regard.

Section 12 (2) (d) of the Act provides that the founding document (or relevant law) must make provision for the organisation to be a body corporate and have an identity and existence distinct from its members or office-bearers. So, as the Act stands, if the law or the founding document of an NPO does not make provision for this requirement, than it cannot be registered.

Position relation to voluntary associations:

The common law deals with the establishment of voluntary associations which in essence is an agreement between three or more people to achieve a common object, primarily other than the making of profits.⁴⁹

From the aspect of legal personality, voluntary associations may be classified as:

- a.) Corporate bodies under the common law known as the "universitas"; and
- b.) Those which remain unincorporated at common law, the non-corporate associations.⁵⁰

When deciding how to classify voluntary associations the court will consider the constitution of the organisation, and its nature, objects and activities. In order to be classified as an "universitas" three

⁴⁹ Bamford, "The Law of Partnership and Voluntary Association in South Africa", Third Edition, Juta, 1982, page 117

⁵⁰ Bamford, "The Law of Partnership and Voluntary Association in South Africa", Third Edition, Juta, 1982, page 126





main elements must be present namely:

1. The association must continue as an entity notwithstanding the change in membership,
2. The association must be able to hold property distinct from its members, and
3. It must be clear that no member has any rights by reason of his membership to the property of the association.⁵¹

If all of these requirements are met the "universitas" has legal personality.

Section 12(2) of the Act sets out certain elements that must be contained in the constitution of a voluntary association wishing to register as a Non-profit Organisation. Of particular relevance are the following:

Sec 12(2)(d) - make provision for the organisation to be a body corporate and have an identity and existence distinct from its members or office bearers;

Sec 12(2)(e) - make provision for the organisation's continued existence notwithstanding changes in the composition of its members or office bearers;

Sec 12(2)(f) - ensure that the members or office bearers have no rights in the property or other assets of the organisation solely by virtue of their being members or office bearers.

Section 12 in fact mirrors the requirements for a voluntary association to gain legal personality in terms of the common law. All voluntary associations which agree upon a constitution containing the elements required in the NPO Act, will therefore have legal personality and body corporate status in terms of the common law, even prior to their actual registration as NPOs.

Position in relation to section 21 companies:

Section 65 of the Companies Act provides that on incorporation of a company, it shall be body corporate.

Position in relation to trusts:

The common law position pertaining to trusts is as follows:

"A trust is not a legal persona but a legal institution, sui generis. The assets and liabilities of a trust vest in the trustee or trustees. The trustee is the owner of the trust property for purposes of administration of the trust, but qua trustee he has no beneficial interest therein. . . . Unless one of the trustees is authorised by the remaining trustee or trustees, all the trustees must be joined in suing and all must be joined when action is instituted against a trust. . . . In legal proceedings trustees must act nomine officii and cannot act in their private capacities."

Mariola and others v Kaye-Eddie NO and others 1995 (2) SA 728 (W) at 731C-F

Upon a strict literal interpretation of sections 12, a trust (in its common law form) cannot become a registered NPO under the NPO Act. The intention of the legislature was however clear to make provision for nonprofit trusts to become registered NPOs.

4. Effect of Registration:

Section 16(1)(c) of the Act states that the certificate of registration of non-profit organisations, or a duly certified copy of the certificate, is sufficient proof that the organisation is a body corporate. Section 1(2)(b) of the NPO Act qualifies this by setting out that Section 16(1)(c) only applies to the extent that they do not conflict with any other law governing non-profit organisations. Section 16 does not imply the creation of a separate legal entity, but it is of an evidentiary value to registered non-

⁵¹ Bamford, "The Law of Partnership and Voluntary Association in South Africa", Third Edition, Juta, 1982, page 128





profit organisations.

Section 16 (1) (c) is clearly in conflict with the common law position in relation to trusts. It is not in conflict with the common law position relating to voluntary associations or with the Companies Act in relation to section 21 companies.

5. Suggestions:

The suggestion is to refine section 12 to make specific provision for the position of the non-profit trust.

Section 12 creates a further problem in relation to non-profit trusts that have been established in terms of a will. No provision is made in terms of the NPO Act for the registration of a trust created in terms of a will which does not comply with the requirements of section 12.





APPENDIX 5: REFERENCE TEAM IMPACT ASSESSMENT

NAME OF COMPANY/ ORGANISATION	NAME OF REPRESENTATIVE	TEL NO	FAX NO	EMAIL ADDRESS
Nonprofit Consortium	Tessa Brewis	021-422 3414	021-4223389	tessab@npc.org.za
Legal Resources Centre	Thami Mbatha	011-836 9831	011-8368680	thami@lrc.org.za
Charites Aid Foundation Southern Africa	Yvonne Morgan	011-726 1148	011-7263877	ymorgan@cafsouthernafrica.org
SA Congress for ECD	Mongoatho Mofokeng	012-321 5154	012-3215168	congress@satis.co.za
Nonprofit Consortium	Ricardo Wyngaard	021-422 3413	021-4223329	ricardow@npc.org.za
DOSD - Panel of Arbitrators	Leah Nchabeleng	012-344 4255 082 496 7070	012-3437774	lberkowitz@peacorp.co.za
CIDC (Corn)	S'Bongiseni Vilakazi	031-260 2195	031-2602849	vilakazis@ukzn.ac.za
SANGOCO	F Shabodien	011-403 7746 083 447 5061	011-4032515	faurama@sangoco.org.za
NDA	Nkhensani Mthembu	011-718 5500	011-4032515	Nkhensanim@nda.org.za
Rosenthal Attorneys	Richard Rosenthal	021-423 2975	021-4240377	partners@iafrica.com



