



Funding Practice Alliance

Oral Submission to the Standing Committee on Trade and Industries: Review of the South African Gambling Industry and its regulations: 02 November 2011

1. Background

The Funding Practice Alliance is made up of four organisations; CDRA (Community Development Resource Association), Inyathelo-The South Institute for Advancement, REAP (Rural Education Access Programme) and SCAT (Social Change Assistance Trust). The purpose of the FPA is to conduct research into, inter alia, the size and scale of funding to CSOs, good funding practices including grant-making practices; the administrative capacity of state funding agencies; state and civil society power relations; mutual accountability between grant-seekers and grant-makers; decision making processes related to funding; and the effectiveness of funding relationships as well as exit strategies.

The members of the FPA interact with a large number of Community Service Organisations (CSOs) in the course of their work. These organisations include Community based Organisations (CBOs), Non-Government Organisations (NGOs), faith based organisations and intermediary grantmakers operating in a variety of sectors and across various scales of operation. Over the years these organisations heard many organisations expressing their frustrations with the state of the National Lotteries Distribution Trust Fund (NLDTF). As a result the FPA decided to mobilise a strategic response to the concerns raised, to move the debate from a large pool of anecdotal impressions to sound empirical research with the emphasis on solution-driven conversations in service of the larger social development agenda.

The current submission is based on extensive research conducted in 2010 with over 220 organisations and with staff and members of the National Lotteries Board (NLB). The research, "Meeting their Mandates" 2010 also focussed on the Act and other literature related to the NLB and the NLDTF. The research project confirmed that the NLB has been plagued with problems in respect of its disbursement of National Lottery Funds. This has demonstrated limited consideration for the grantmaking aspect of the National Lotteries.

NLB grantmaking has been riddled with ineffective and sometimes confusing lines of communication and accountability between the NLB, the Minister and the three Distribution Agencies (DAs). The consequence is that it is difficult to hold anyone accountable for the NLB's inability to disburse funds effectively and efficiently to CSOs. The NLDTF is one of the biggest funds set up to fund CSOs in the areas of charities; sports and recreation; arts culture and national heritage and and reconstruction and development. The last category has not received any funds since the Ministry no longer exists.

The following is a summary of the research report's findings and recommendations and highlights the most important issues. The report however covers in more details the challenges experienced by civil society when engaging with the NLB and the NLDTF.

2. Findings and recommendations

2.1 Legislation

2.1.1 There is currently no statement of intent in the National Lotteries Act of 1997 indicating the long term purpose of the NLDTF.

Recommendation: In the Act, there should be a statement of intent, indicating the contribution to society that the funds from the NLDTF seeks to make. This statement should include a focus on sustainable development and social change. The terminology and definition of "charities" in the Act is limiting. Activities and initiatives that are supported by the NLDTF should be in line with this statement.

These activities and initiatives should not only be short term service delivery oriented but should also be those which have a longer term strategy to improve society and will make a difference to South Africans. Consideration should be given to organisations which strengthen civil society and thereby strengthen our democracy.

2.1.2 There are confusing lines of accountability between the NLB, the Minister and the three DAs. In the Act the NLB is given the responsibility for overseeing the NLDTF but has no statutory powers to intervene or influence the grant-making process. According to the research CSOs indicate that it often takes over a year to get a response to applications to the NLDTF. The NLDTF has disbursed less than 50% of available funds in each of the last three years.

Recommendation: Clear lines of accountability must be put in place. The Act should clarify to whom the DAs account. The appointment of the DAs must take into consideration skills, understanding of the sector and most importantly issues of conflict of interest. The DAs should be permanent in order to ensure greater efficiency. Currently they meet 2 days per month and are not able to handle the high volumes of work. The 2008 review of the NLB recommended that a separate grantmaking body should be established with oversight by the NLB.

The recent judgment by Gamble 2010 Western Cape High Court and Cachalia 2011 Supreme Court of Appeals in the cases of SAEP and Another v National Lotteries Board and Others case, clarifies that the DAs are sub-committees of the NLB and not independent entities. They have been acting as independent entities but in fact according to this judgment they are acting on the board (NLBs) behalf.

2.2 Funding criteria and practice

2.2.1 There is a lack of clarity or "moving goal posts" for CSOs on criteria for funding, compliance systems and procedures. There are also limited and notably administrative relationships between the NLDTF and the beneficiaries. Responses from the DAs indicates limited care for the sector and its sustainability. In the judgement by Cachalia Supreme Court of Appeal 2011, he states that, "it is not allowed to treat every departure from its literal prescriptions as fatal"

Organisations are reporting contradictory responses from the NLDTF when being told their application for funding was turned down. Responses to "good causes" which fit the criteria but are being turned down include, "budget constraints of the NLDTF" and "your financial

statements do not demonstrate urgent financial need". The contradictions indicated are that the NLDTF had R6 billion unspent in 2009 and had underspent by more than 50% for three years before that and in the second instance an organisation that **is** in urgent financial need will probably not meet the governance requirements of the NLDTF.

Recommendations: Clear criteria must be advertised on the NLDTF web site and in the annual report. These criteria must be applied consistently but with due consideration for the target beneficiaries. In the recent judgement in the Supreme Court of Appeals, Judge Achmat Cachalia states "if they [requirements/guidelines/criteria for applicants] are applied in this manner [rigidly or inflexibly] the decision-maker elevates the guideline to an immutable rule and thereby fetters its discretion, which it may not do."

2.2.2 Small CSOs struggle with changing criteria, high level requirements and requests for additional information. These organisations which are less well resourced and who lack the capacity to access, interpret and respond to the criteria and calls for proposals need assistance.

Recommendation: Small CSOs should receive additional support with their applications for funding. Developmental approaches should be used to ensure they are able to access the funds of the NLDTF. An amount could be ring-fenced for these purposes. The existence of these organisations is a critical element of supporting a developmental agenda in South Africa. Consideration should be given to a small grantmaking mechanism or working with intermediaries who are involved in this activity daily.

2.2.3 An important contributing factor in the poor performance of the NLDTF and its negative impact on organisations is its lack of understanding and care for the sector, organisational planning, budgeting and programme implementation.

Recommendation: Staff who administer the grants must have experience of working in the CSO sector, have an understanding of grantmaking and should be measured on their performance in terms of the care and concern shown for the organisations which are applying for funding.

The NLDTF should have five year funding strategies so that it can make long term commitments to organisations. Multi year funding agreements would mean that organisations do not have to make year on year applications. This would reduce the administrative burden on the NLDTF and the DA s.

A grantmaking entity which shows care and concern for the sector it supports should have staff who can assist the applicants who are unsuccessful to submit successful applications in the future or at least to understand the criteria so that they do not waste time submitting an application when they do not meet the criteria.

The NLDTF has been known to withhold funds promised and to delay the payments of committed funds causing organisations to go into cash flow crises. Our research shows that this is probably caused by a lack of legal capacity to process contracts. The DAs must adhere to the Act and its regulations. The NLDTF must have had clear objectives and time frames for payments. CSOs should be able to hold it accountable to its own regulations. Time and money is being wasted engaging attorneys to assist with accessing promised funds and in taking the NLDTF to court.

2.3 General:

2.3.1 The Miscellaneous funding category of the NLDTF has no public accountability

mechanism to hold the Minister of Trade and Industry accountable for grantmaking decisions in respect of this particular fund. This has led to funds being allocated to the National Youth Development Agency, the Commission on Gender Equality and Cosatu. None of these institutions can be regarded as needy and the NYDA and the Gender Equality are adequately funded by the State. This while CSOs are closing down.

Recommendation: Funding should be ring-fenced for civil society and should not reach para-statal, government agencies, political parties, trade unions, provinces or local government. The Minister should be held accountable for the allocation of these funds.

2.3.2 There do not seem to be any mechanisms in place for CSOs to give ongoing feedback to the NLDTF on its performance. Such monitoring of its own performance would assist the NLDTF to continuously improve and meet the goal of supporting good causes in society.

Recommendation: An ongoing feedback mechanism should be established for beneficiaries and applicants of funds from the NLDTF to review its performance and ensure continuous improvements. There are many examples of these mechanisms available in the grantmaking sector. This ongoing learning cycle is known to contribute to greater efficiency and efficacy.