

GOVERNANCE
PRACTICES OF
NATIONAL NON-
PROFIT BODIES
AND NATIONAL
NETWORKING
ORGANISATIONS
IN SOUTH AFRICA



social development

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Ricardo Wyngaard and Peter Hendricks
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FOREWORD

The Nonprofit Organisations Act (No. 71 of 1997) mandates the Department of Social Development (DSD) to contribute towards an enabling environment within which non-profit organisations (NPOs) can flourish. One of the objects of the Act is to encourage NPOs to maintain adequate standards of governance, transparency and accountability, as well as improve those standards. The NPO Act was conceived to complement self-regulatory efforts within the non-profit sector. Accountability and good governance practices are therefore indispensable within a regulatory framework.

The DSD has received an increasing number of requests from national bodies for strategic guidance on a range of governance issues. The main issue is the composition of governance structures, which are usually made up of provincial representatives and senior employees from organisational branches. This arrangement poses a number of challenges, including possible conflict of interest among governance members.

Does this imply that national bodies do not comply with their own governance conditions, as outlined in their founding documents, for accountability and transparency? Alternatively, are there disparities between national bodies with regard to establishing levels of governance and management structures in order to promote accountability and transparency?

In responding to these questions, and to contribute further to creating an enabling environment for NPOs in South Africa, the DSD, together with Inyathelo – The South African Institute for Advancement, undertook this study between July 2008 and October 2009. The aim was to find best practice models in governance based on the lessons that emerged from the assessment exercise.

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- South African National Council on Alcoholism and Drug Dependence (SANCA)
- Family and Marriage Association of South Africa (FAMSA)
- South African Federation for Mental Health (SAFMH)
- Child Welfare South Africa (CWSA)
- Deaf Federation of South Africa (DEAFSA)
- National Council for Persons with Physical Disabilities in South Africa (NCPDPSA)
- Community Organisations Regional Network of South Africa (CORN SA)
- South African Congress for Early Child Development (SACECD)
- Women's National Coalition (WNC)
- Suid-Afrikaanse Vrouefederasie (SAVF)
- Family LifeChange Centre South Africa (Happy Families)
- Epilepsy South Africa
- Ondersteuningsraad

The DSD treats this report as a starting point in addressing the capacity needs of NPOs. In addition, it may be used as a tool to encourage and entrench good governance practices in the sector, not only to enhance functional ability, but also to meet the diverse service delivery needs of broader South African communities.

The Department of Social Development
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ACRONYMS

AGM	annual general meeting
CBO	community-based organisation
CEO	chief executive officer
COEP	<i>Comitê de Entidades no Combate à Fome e pela Vida</i> (Committee for Public Against Hunger and for Life)
CSO	civil society organisation
ECDPM	European Centre for Development Policy Management
DSD	National Department of Social Development
FICA	Financial Intelligence Centre Act
NGO	non-governmental organisation
NPO	non-profit organisation
NDA	National Development Agency
NLB	National Lotteries Board
NWA	National Welfare Act
OECD	Organisation for Economic Co-operation and Development
PFMA	Public Finance Management Act
PBO	public benefit organisation
SAA	Social Assistance Act
SAGA	South African Grant Makers Association
SAQA	South African Qualifications Authority
SARS	South African Revenue Service
SARS TEU	South African Revenue Service Tax Exemption Unit
SETA	Sector Education and Training Authority
UNDP	United Nations Development Program
UNESCO	United Nations Education, Scientific and Cultural Organisation
US	United States

ABBREVIATIONS

CV	curriculum vitae
e.g.	for example
et al.	and others
i.e.	that is
Ibid./ibid.	in the same place
p./pp.	page/pages
Vol.	volume
No.	number

EXECUTIVE SUMMARY

The Department of Social Development (DSD)¹ is committed to ensuring implementation of the Nonprofit Organisations Act (No. 71 of 1997),² with particular reference to ensuring appropriate and adequate standards of governance, transparency and accountability amongst non-profit organisations (NPOs). The DSD's NPO Directorate has received increasing numbers of requests from national welfare councils, national bodies and national networking organisations to intervene and provide strategic guidance on a range of governance issues. In particular, such organisations were experiencing challenges in complying with their own governance conditions as set out in their founding documents with regard to entrenching accountability and transparency.

In response to these queries, the DSD commissioned Inyathelo – The South African Institute for Advancement to conduct a study into current governance practices of national non-profit bodies and national networking organisations (the target organisations). The goals of the study were to assess the extent to which these organisations are modelled distinctively in terms of organisational and governance formation and structure, and to make recommendations to the DSD on appropriate interventions and organisational structural arrangements that would best promote good governance practices in such organisations.


Two kinds of organisations, different in certain ways and alike in others, were identified for purposes of the study, namely, national non-profit bodies and national networking organisations.³ At the start of the project, while it was agreed with the DSD that it was difficult to make a clear distinction between the two kinds of target organisations, it was apparent that this assumption needed to be tested to address adequately the primary research question. The research design and methodology were therefore shaped in a way that would assist in identifying on a comparative basis (using quantitative and qualitative tools) the distinctive features, if any, of each type of organisation.

This study is exploratory in nature and aims to place certain key findings and specific recommendations⁴ on the Department's non-profit governance agenda.

Key Findings

The following are the key findings of the research:

- 1.** There are important differences between national non-profit bodies and national networking organisations, including that:
 - a.** National bodies have generally been in existence for longer than national networking organisations.
 - b.** Historically, funding and legislative relationships between government and the two types of target organisations have been different, i.e. legislative and financial support were skewed towards national bodies as service providers while conditions for the establishment and operation of national networking organisations were not as supportive.
 - c.** The internal governance structures of the two types of target organisations have evolved differently. The purpose of the establishment of networks primarily evolved from the members' desire to fulfil advocacy roles; the purpose of the establishment of national bodies is usually for improving service delivery or expanding delivery nationally. National bodies establish themselves from a centre, and then expand to the periphery; national networking organisations usually establish themselves from the periphery, and then evolve to a centre.
 - d.** The sources of support for the two types of target organisations are different. National bodies receive more funding from government and local corporations, while national networking organisations receive almost no support from government and local corporations, and are reliant on international donors.


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- 2.** The target organisations mainly have bottom-up governance structures with members electing board members onto governing boards. As the target organisations all operate at a national level, the bottom-up governance structure is ordinarily based on provincial representation. Elections typically take place at annual general meetings (AGMs), which often result in the appointment of a completely new board.
 - 3.** The bottom-up governance structure is problematic for the target organisations in a number of areas, including the following:
 - a.** The collective vision is often at risk of being superseded by provincial or regional mandates.
 - b.** Ensuring that appropriate skills are represented on the board is usually less important than ensuring provincial representation on the board through a membership-based election process.

Key Recommendations

Based on the findings, a number of key recommendations⁵ are made for government and NPOs.

Government should:

- 1.** Implement a national drive to encourage individuals to make themselves available to serve on NPO boards.
- 2.** Work in partnership with the non-profit sector on a joint campaign to mobilise individuals in civil society and the private sector to offer their skills, experience and resources through service on NPO boards.
- 3.** Work with the private sector and the target organisations to ensure the availability of suitable candidates for NPO boards and to encourage support for NPOs through effective board membership.
- 4.** Adopt a coherent approach to the development of board representation in NPOs, as envisaged in Section 3 of the NPO Act.⁶ This includes revising the measures and policies of the national and provincial departments of social development to ensure that they strengthen the operational capacity of such organisations.
- 5.** Overhaul the policies of other state agencies that fund the target organisations and thus reinforce the responsibilities of these agencies under the NPO Act.
- 6.** Develop a national resource that can deal with some of the main governance challenges being faced by NPOs, including those challenges highlighted by the target organisations. The various options for such a resource are
 - a.** the appointment of a governance advisory committee by the DSD that can publicly respond to requests for advice on non-profit governance-related matters,
 - b.** the establishment of a non-profit governance institution that focuses on conducting research, developing resources and providing advice and assistance to NPOs on non-profit governance,
 - c.** the expansion of knowledge, assistance and resources on non-profit governance by drawing on the experience and expertise of existing organisations, and
 - d.** the development of appropriate unit standards to be recognised by the South African Qualifications Authority (SAQA) as a starting point to introduce a proper board development strategy in South Africa.

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- 7.** Support boards in being proactive by developing and implementing a strategy on capacitating board members through training and development. This should include
 - a.** the developing of a commitment towards building the capacity of board members,
 - b.** implementing a comprehensive needs assessment for capacity building of board members, and
 - c.** scheduling regular capacity-building sessions for board members.

NPOs should:

- 1.** Ensure the cultivation of a shared vision for an organisation's national structure in order for it to distinguish and elevate itself from the different regional concerns. This is aimed at ensuring that limitations inherent in the *constituent representation model* are addressed. The effectiveness of an organisation is dependent on how successfully it can mobilise support for its common vision, taking into account that constituent participation in the organisation's activities is essential.
- 2.** Find a suitable balance between ensuring constituent participation and having individuals with governance skills present on the board.
- 3.** Enhance board continuity through a process of staggered rotation and smaller governance committees.
- 4.** Adopt proper recruitment and orientation strategies while also providing meaningful constituent engagement through the development of policies and procedures that encourage member and constituency engagement with and through the governing board.

It is envisaged that the findings of this study will improve understanding of the context within which the target organisations operate, which will, in turn, lead to enhanced communication and relationship building between the DSD and the target organisations.

It is also hoped that the recommendations will be taken up by the DSD and implemented in the belief that all of these recommendations are required to ensure the development and maintenance of good governance practice, not only amongst the target organisations, but also in the South African non-profit sector more broadly. Such implementation can only serve to strengthen South Africa's NPOs and ensure a stronger civil society.

INTRODUCTION

The DSD's NPO Directorate, as part of its mandate in terms of the NPO Act,⁸ needs to ensure that the standard of governance within NPOs is maintained and improved. Thus, in 2008, the DSD's NPO Directorate initiated a study into national non-profit bodies and national networking organisations, with a particular emphasis on current governance practices being employed by these two kinds of NPOs. The aim of the study was to make recommendations to the Department regarding appropriate interventions and alternative governance structures that would promote best practice for non-profit governance.

The NPO Directorate, in its commissioning of this study, pointed out that it receives requests from national welfare councils, national bodies and national networking organisations for it to provide strategic guidance on a range of governance issues. These requests are received from national organisations with specific governance structures where board membership is in some cases based on provincial affiliation, and in other cases is drawn from senior employees of organisational branches. This has created, according to the Department, challenges within such national organisations to comply with their own governance conditions, as set out in the founding documents, and to entrench accountability and transparency.

In the words of the Department:


"This also exposed high levels of disparities that exist within national bodies in relation to the manner in which national bodies conduct their affairs, and this poses the greatest threat to the efforts of maintaining high standards of governance across the sector, and the level to which the national bodies are able to meet their objectives in strengthening service delivery. These disparities exist not only amongst the national bodies, but also within national networking organisations/structures".⁹

This research therefore focused on governance practices within two distinct kinds of national organisations (i.e. national bodies and national networking organisations).

The overall objectives of the project (as reflected in the Project Charter¹⁰) were

- 1.** to assess the extent to which national bodies and networking organisations are modelled distinctively in terms of organisational and governance formation, and
- 2.** to recommend appropriate interventions and alternative organisational structural arrangements that would promote best practices in non-profit governance, based on lessons emerging from the assessment exercise.

It is well established that good governance is essential for the long-term sustainability of NPOs¹¹, and it therefore follows that for organisations to be effective in achieving their objectives, and to be sustainable in the longer term, good governance is essential. Regardless of what the governance structure is, there are standard features or characteristics of an effectively governed organisation that are recognised internationally,¹² and that illustrate why good governance can be considered central to the sustainability of South African civil society.



An organisation that *does* exercise effective governance¹³

- is accessible and responsive to beneficiaries, donors and staff,
- supports transparency, i.e. freely and accurately discloses information about governance, finances and operations,
- operates with a sense of responsibility, integrity, honesty and respect,
- embraces diversity and inclusiveness,
- ensures constructive conflict resolution,
- regularly monitors adherence to applicable laws, regulations and bylaws,
- takes action to build and protect its reputation and interests,
- involves stakeholders in planning and evaluations,
- educates board members about their roles and responsibilities,
- promotes public education on the work and value of the organisation,
- engages in regular, objective assessments of its board, the chief executive officer (CEO) and the overall organisational performance,
- offers quality services, and
- provides a healthy work environment.

An organisation that *does not* exercise effective governance has

- too few resources,
- strife and confusion within the organisation,
- inappropriate board meddling in day-to-day organisational operations,
- board passivity or inactivity,
- excessive turnover of the CEO or board members,
- difficulty in recruiting credible board members,
- chronic financial deficits,
- low attendance at, or participation in, board meetings,
- failure to address conflicts of interest at a board level, and
- poor communications with funding agencies and stakeholders.

The importance of good governance in South African non-profits, and its central role in ensuring the sustainability of non-profit organisations, is with particular reference to the critical role played by national bodies and national networking organisations not only in the provision of direct services within the welfare sector, but in these organisations' support to government through the provision of such welfare and other services.

In **Section 1**, this Report outlines the research methodology adopted in the study to answer the key questions and contextualise the findings. This section includes an outline of the research approach, design and tools used.

The Report includes a literature review in **Section 2**, which outlines the theories and values of non-profit governance and factors that influence it. The review specifically looks at network governance, including the forms and factors that influence governance and the factors that present governance challenges to networks. This section seeks to contextualise the research project in international non-profit governance and standards for effective governance, give a benchmark against which governance structures and practice in South Africa can be compared, and provide a foundation from which the key recommendations are made.

Section 3 gives an overview of the South African legislative, regulatory and policy environment in which NPOs operate. An enabling legislative environment is understood internationally to be one of the key external factors required to support effective governance. In this section, a number of key pieces of South African legislation, regulation and policy are reviewed to provide a context for understanding the impact of these on non-profit governance in South Africa.


Section 4 includes a summary of the quantitative research findings, reported according to the key features and practices required for good governance. The research findings are presented comparatively, separated out into those findings related to national bodies and those findings related to national networking organisations.¹⁴ The qualitative research findings are presented comparatively in **Section 5**.

The interpretation of the findings is discussed in **Section 6**, which provides further insights into the nature of the target organisations. Insights are also provided on the legal, policy and funding environments in which the target organisations operate and the impact that these legal and resource factors have on the target organisations; the internal structures of target organisations in terms of organisational and governance structures; and good governance practices adopted by target organisations.

Recommendations for appropriate DSD and NPO interventions to promote good governance practice among both types of target organisations are presented in **Section 7**. Recommendations, arising from and based on the findings of this study, focus on specific measures that could be taken. These include the

- development of a coherent government approach to governance capacity building in target organisations,
- development of a national resource on non-profit governance,
- launch of a partnership-based drive to encourage service on non-profit boards,
- development of a proactive culture of learning in target organisations,
- building of capacity at board level, and
- development of an outline of general governance guidelines.

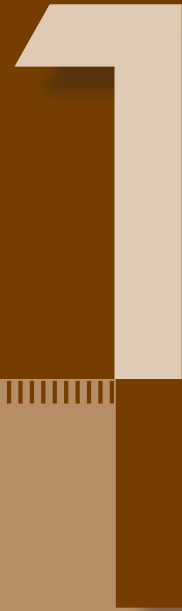
Section 8 provides an overview of the project. It includes a short review of limitations of the study as well as an indication of further research required that would add depth and value to an understanding of the factors hindering and enabling effective governance practices among South African NPOs.



Endnotes

- ¹ Hereafter referred to as the DSD or the Department.
- ² Hereafter referred to as the NPO Act.
- ³ The distinction between the two kinds of organisations was not clearly defined at the commencement of the project. The key criteria that were used for both types of organisations were that they should operate at national level, conduct operations in three or more provinces, be registered in terms of the NPO Act, and have their head office in South Africa.
- ⁴ The findings and recommendations made in this report are done so independently of the DSD.
- ⁵ Additional and more detailed recommendations can be found in Section 7 of this Report. Key results are presented in graphs in Appendices 2 and 3 of this Report.
- ⁶ Section 3 of the Act sets out the state’s responsibility as follows: “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 nonprofit organisations to perform their functions”.
- ⁷ In this model, the board’s primary responsibility is to balance the interests of constituents against the best interests of the overall organisation.
- ⁸ *All You Need to Know About the Registration of a Non Profit Organisation (NPO)* – see References section of this Report.
- ⁹ See Project Charter agreed to between DSD and Inyathelo.
- ¹⁰ Ibid.
- ¹¹ For more on the link between good governance practices and organisational sustainability, see Wyngaard, Mellet & Gastrow (2005), Wyngaard (2009a, 2009b) and Hendricks (2009).
- ¹² See BoardSource (2008).
- ¹³ See Hendricks (2009, p. 10).
- ¹⁴ Detailed results are available in Appendix 2, 3 and 4 of this Report.

RESEARCH AND METHODOLOGY



The central thesis of this research report is that South African national non-profit bodies and national networking organisations are hindered in their capacity to achieve good governance, as defined and accepted internationally, because their current governance structures, amongst other key factors, do not adequately support the implementation of good governance practice.

1.1

RESEARCH PHASES AND DURATION

The research took place over 19 months from May 2008 to November 2009, and involved the following six phases:

1. Phase One: the research design.
2. Phase Two: a comparative international literature review.
3. Phase Three: the development of the research sample and the design of the research tools.
4. Phase Four: the collection and analysis of the quantitative data (self-administered survey), which also served to identify the data for which further evidence and corroboration could be gathered during the next research phase.
5. Phase Five: the collection and analysis of qualitative data (through interviews and focus groups).
6. Phase Six: the writing up of the research results, analysis and interpretation, and formulating key recommendations for the DSD, based on the interpretation of the findings.

The two key objectives of the study were to:

1. assess the extent to which national non-profit bodies and networking organisations are distinctively modelled in terms of organisational and governance formation, and
2. recommend appropriate interventions and alternative organisational structural arrangements that would promote best practices in non-profit governance, based on lessons emerging from the assessment exercise.

The first objective outlines the primary research question addressed in this study. In addressing this question, two key assumptions informed the research design. The first assumption was that there are clearly defined and internationally accepted best practice standards with respect to non-profit governance. The second key assumption, based on reports from the DSD,¹⁵ was that South African national bodies and national networking organisations are currently experiencing deep challenges in aligning their governance structures with these best practice standards.

1.2

RESEARCH DESIGN

To answer the primary research question, and to determine the validity of the central thesis and the key assumptions, the research design focused on the following two areas:

1. A comparative international literature review¹⁶ was conducted in order to highlight best practice and to outline the organisational and governance structures required for the implementation of best practice. It also served to facilitate an understanding of the challenges most often experienced in implementing structures for best governance practice.
2. Research was conducted into current governance structures, practices and factors impacting on or challenging organisational efforts to achieve effective governance in the two types of target organisations.¹⁷

The research design employed a mixed methods approach,¹⁸ in order to gather both quantitative and qualitative data from a small sample. For the purposes of this study, a mixed methods approach is defined as an approach that¹⁹

- employs different methods for gathering numeric and textual data,
- uses different tools in a specific order to first gather numeric and then textual data, and
- uses different types of respondents, and in some instances the same respondents, to use textual data to corroborate and expand upon numeric data.

1.3

RESEARCH SAMPLE²⁰

At the start of the research project, while it was clear that the project needed to cover the two types of national organisations, the distinguishing line between these two kinds of target organisations was not yet clear. Thus, the research design was constructed based on the DSD's directive that the distinction was not substantive, and, at this stage, sampling criteria were drawn up without a distinction between the two organisation types. To ensure that respondent organisations fell within the group of South African national NPOs that the DSD regarded as target organisations, the following criteria were used for the identification of target organisations:

1. They should be operating at a national level.
2. They should conduct operations in three or more provinces.
3. They should be registered in terms of the NPO Act.
4. Their head office should be located in South Africa.

However, it was also decided that while the key sampling criteria would be uniform in order to develop a sample inclusive of both organisation types, the assumption of insubstantial differences between the two types of target organisations needed to be tested. For this reason, the development of research tools was based on a distinction between national non-profit bodies and national networking organisations.

Target organisations for the sample research group were identified from the following sources:

1. a list from the DSD containing the names and contact details of 23 national NPOs that receive funding from the DSD,
2. the NPO Directorate's database,²¹ and
3. the *Prodder Directory*.²²

A sample of 110 organisations was selected that met the four key criteria listed above. This sample group included 51 national networking organisations and 59 national non-profit bodies.

1.4

RESEARCH TOOLS

Hard data was gathered using a survey questionnaire and through interviews, both based on questions that would elicit a range of information about respondent organisations and the governance experiences within respondent structures. Such an approach was adopted to ensure that hard data was gathered on the primary research question. In addition, it would facilitate the constructing of profiles of the two different organisation types, and provide information that would assist in developing an improved understanding of the contexts in which the two different types of organisations operate, both currently and historically. This data would also assist the researchers in determining the key factors in current governance structure and practice, and in understanding how these factors impact on achieving effective governance.

Research tools designed to gather quantitative data included a self-administered survey²³ in the form of a questionnaire. In line with the objectives of the study, two questionnaires were developed – one for national non-profit bodies and one for national networking organisations. The questionnaires, informed by the literature review, were designed to gather data on board structure and practice in the following five key areas:

1. the legal status and structure of the organisation,
2. board membership and recruitment processes,
3. organisational resourcing,
4. perspectives on board performance, and
5. frequency of planning, meetings and internal communication.

In addition, the following research tools were developed to gather qualitative data:

1. **Structured interviews (onsite):**²⁴ In line with the objectives of the study, two sets of interviews were conducted onsite, one with national non-profit bodies and one with national networking organisations. These structured interviews were designed to expand on, and corroborate, data gathered using the survey questionnaire.
2. **Structured interviews (key informants):**²⁵ To further corroborate the questionnaires and onsite interviews, and to gather additional contextual information and input, interviews were conducted with key informants from the non-profit sector, government, state agencies and the donor sector.
3. **Focus group meetings:**²⁶ Two focus group meetings were designed to discuss key internal and external factors in the South African non-profit sector that impact negatively on effective organisational governance.

Further, in support of the study, the DSD convened a stakeholder reference group,²⁷ which met three times during the research and write-up process, and provided input into the final recommendations to the DSD.

Endnotes

- 15 As per Project Charter.
- 16 See Section 2 of this Report.
- 17 See Section 3 of this Report.
- 18 Taking into account the critiques of and meanings inherent in this approach; e.g. see Bazely (2002).
- 19 For example, see also Creswell (1998).
- 20 A specific commitment by the researchers to respondents was that the sources of information (both qualitative and quantitative) would remain confidential. This is therefore the case, unless otherwise indicated.
- 21 <<http://www.npo.gov.za/frmSrchM.aspx>>
- 22 <<http://www.prodder.org.za>>
- 23 See Appendix 1 of this Report for a list of respondent organisations.
- 24 Individual respondent names remain confidential.
- 25 Key informant names remain confidential.
- 26 See Appendix 1 of this Report for a list of focus group respondents.
- 27 See Appendix 1 of this Report for the names of the reference group respondents.

LITERATURE REVIEW



In order to provide a context for the study and to answer the primary research question, the literature review aimed to

- highlight best governance practice,
- identify the organisational and governance structures required for the implementation of such best practice, and
- achieve an understanding of the challenges most often experienced in implementing the kinds of governance structures that are most supportive of best governance practice.

2.1

CIVIL SOCIETY'S
CONTRIBUTION WITHIN
A DEMOCRATIC STATE

In his study of civic involvement in Italy, Putnam²⁸ contrasts the wealthier and more advanced northern region of Italy with the south.²⁹ Putnam's research aims to "explore whether the success of a democratic government depends on the degree to which its surroundings approximate the ideal of a 'civic community'".³⁰ Civic community can be seen as a subcategory of the non-profit sector that pursues "self-interest defined in the context of broader public needs".³¹

In Putnam's research, he finds that the richer north has a civic community that is more actively involved in local associations than the south. Specifically, his survey finds that:

- Local government is more effective in regions with more active associations.³² "Regions with many civic associations, many newspaper readers, many issue-orientated voters, and few patron-client networks seem to nourish more effective governments."³³
- Political involvement in the south is more restricted to personal favours, as opposed to the public interest.³⁴
- Political leaders in the north gravitate towards democratic principles and greater equality than those in the south, where social and political hierarchies are more important.³⁵
- The political environment has adapted to the involvement, or lack of involvement, of citizens. The more active civic associations are, the more political accountability increases.

Putnam's research shows that civil society not only involves a distinct form of governance, but that it also enhances state governance by promoting adherence to democratic principles.

In detail, therefore, a comparative review of international literature was conducted to

1. understand the international governance context in which South African NPOs operate (both national non-profit bodies and national networking organisations),
2. determine the key features of best governance practice internationally,
3. develop a comparative review of organisational and network governance in other countries with a particular emphasis on what is regarded as best practice in those contexts, and what the key challenges are in achieving effective governance,
4. develop a comparative understanding of the main internal and external factors that hinder or enable NPOs in achieving effective governance (including a review of the South African legislative environment), and
5. develop a comparative understanding of network governance internationally and the commonalities in experiences of, and challenges faced by, networking organisations with respect to network governance.

The literature review looked at theories on non-profit governance, and the role of a number of core governance values and ethics. It also considered the emerging literature on network governance, including different forms, reasons, influencing factors and common challenges faced by networks.

2.2

DIFFERENT GOVERNANCE LEVELS

Scholars generally agree that nations are made up of three different spheres, namely civil society, state and the market.³⁶ For some, civil society is the public space between the state and the market (see Figure 1).

Setianto defines civil society in terms of the following three characteristics:³⁷

1. It operates under the rule of law.
2. It operates in the space³⁸ between state and market, where state and market interests are contested, so civil society is not only in opposition to both state and market, but it is also influenced by both forces.³⁹
3. It operates as a space/sector with great diversity and pluralism.⁴⁰

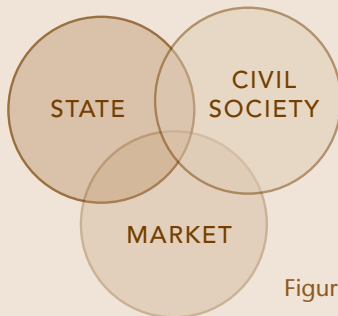


Figure 1

The three spheres fulfil different functions in society, and so it is questionable if a single set of governance rules could apply equally to each.

The United Nations Development Program (UNDP) takes a broad view of governance in that it takes into account that there are various roleplayers and stakeholders that may play a part in decision-making about and implementation of governance. The UNDP states that governance is

“the exercise of political, economic and administrative authority in the management of a nation’s affairs at all levels. It comprises the complex mechanisms, processes, relationships and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences, and exercise their legal rights and obligations”.⁴¹

This definition reflects the nature of governance within society today.⁴² In other words, the state is not the only actor involved in the exercise of power and authority. The principal sectors involved with the governance of society are the *public sector*, *corporate sector* and *civil society sector*.⁴³ These sectors intersect and overlap.

2.3

CORPORATE GOVERNANCE

In the past, corporate governance was essentially regarded as corporate *control*. For the most part, it gave expression purely to one underlying ideology, namely *capitalism*. A significant feature of corporate governance is that it was and still is primarily characterised by a “pyramidal business group”.⁴⁴

David Knott remarks that most definitions of corporate governance refer to two things:

- “1. the mechanisms by which corporations are directed and controlled, and
2. the mechanisms by which those who direct and control a corporation are supervised”.⁴⁵

However, definitions of corporate governance have changed with changing global circumstances. For example, the following definition from Sir Adrian Cadbury is clearly important for understanding governance in its broadest sense:

“Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals ... the aim is to align as nearly as possible the interests of individuals, corporations and society”.⁴⁶

Based on the King II Report,⁴⁷ good corporate governance can primarily be identified by the following seven characteristics:

1. There are measures of *accountability* whereby decision-makers and actors could be called to account.
2. There is *acknowledgement* of and respect for the various rights and interests of groups in the company through systems that would lead to *fairness*.
3. Knowledge of a company's information is available to outsiders and stakeholders for meaningful analysis in a frank, accurate and timely manner, giving credence to *transparency*.
4. Senior management is committed to a universally accepted and recognised *corporate culture*.
5. There are *mechanisms* in place whereby *conflict of interests* or potential conflict of interests can be avoided or minimised and whereby undue influences do not affect board decisions.
6. The board shows *responsibility* towards all the company's stakeholders.
7. *Social capital* is built through social responsibility initiatives that respond to social, environmental and human rights issues, and ethical standards.

In the literature reviewed, there is no model of good corporate governance that is common to all. Nonetheless, there is agreement on the following four pillars:

1. Provide assurance to all stakeholders that the business operates in a just and equitable manner, which is ultimately required to protect the long-term future of the company.
2. Be accountable to the ultimate owners of the business.
3. Employ efficient and effective risk management.
4. Corporate governance should lead to business prosperity in terms of results and stakeholder value.

2.4

NON-PROFIT GOVERNANCE

NPOs operate in a different way from the way in which for-profit organisations do, and many of the differences have governance implications. For example:

- For-profit organisations are formed with the principal aim of generating profits, while NPOs pursue some public benefit or promote social change.
- With limitations, the profits generated by profit-making organisations can be distributed among members, whereas any profits generated by NPOs must be used to advance the organisation's objectives.
- In for-profit organisations, those with fiduciary responsibilities are accountable to shareholders, while taking into account the social, environmental and economic impact of business (the triple bottom line)⁴⁸. Their counterparts in NPOs are accountable to donors, beneficiaries and the broader public, as they often receive public donations. Those with fiduciary responsibility are intermediaries between donors and beneficiaries.⁴⁹ NPOs have a duty to use their assets effectively in serving the cause for which they were established.

Robert Lloyd⁵⁰ underscores the modern approach to the accountability of non-governmental organisations (NGOs). This transfers the right to accountability from exclusively those that have authority over an organisation to anyone that has been affected by the organisation's policies.⁵¹ Lloyd argues that NGOs are

- upwardly accountable to donors, government and foundations, which give them their financial and legal base,
- downwardly accountable to their beneficiaries, to whom they provide services or on whose behalf they speak in policy forums,
- inwardly accountability to themselves for their organisational mission, values and staff, and
- horizontally accountable to their peers.

2.5

MODELS OF NON-PROFIT GOVERNANCE

Different models of non-profit governance have been developed over the years, and these are briefly discussed below. No single approach encapsulates the most appropriate model. In general, non-profit governance can be described as the sum of all efforts to ensure an organisation responsibly focuses on meeting its objectives. According to Sanjay Patra,⁵³ governance is a process by which decisions are implemented. Both formal and informal stakeholders influence decision-making and therefore governance issues and matters of governance practice should not only be confined to the board of directors.

It is important to identify the key differences between national non-profit bodies and national networking organisations, and we follow this distinction throughout the literature review. For ease of reference, we refer to governance as it relates to national non-profit bodies as *organisational governance*, and to governance as it relates to national networking organisations as *network governance*.

The models of governance summarised below highlight various common approaches to governance in NPOs. Given the diversity of the non-profit sector, no single approach can be recommended as ideal and applicable across the sector. The models outlined below are used both for organisational governance and for network governance.

Lloyd adds that

“the strength and clarity of these different accountability relationships is not equal. They vary greatly in relation to the relative power a stakeholder has over an NGO. The responsibilities between donors and NGOs, for example, are generally clear and the mechanisms for ensuring accountability strong ... Similarly, governments create the legal and regulatory environment within which NGOs function, so they too have significant leverage to guarantee accountability”.⁵²

The key differences between NPOs and for-profit organisations hold basic yet significant implications for the way in which NPOs should be governed, namely:

- The success of a for-profit, at its very root, is measured according to the profit it generates. If the for-profit has generated a healthy profit during a particular year, that ordinarily spells success for the organisation. This is fundamentally different for a non-profit organisation where, while the goal may be to generate income and possibly a surplus, there are no profits or dividends accruing to any shareholders, member of the board, or staff and the generation of surplus is very rarely a measure of success. The success of a non-profit can in most cases only be measured through the impact an organisation has in terms of its objectives.
- The fiduciaries of the for-profit organisation are accountable to shareholders for the governance of the organisation. If they do not perform well, the shareholders can decide to remove them at the next AGM, through their vote. This is not the same for NPOs because NPOs are accountable to donors, beneficiaries and the public. As such, board members cannot simply be removed by stakeholders who do not ordinarily have voting power within non-profits.

2.5.1 The Policy Governance Model

The policy governance model proposes a separation of powers and functions between the board and the staff of NPOs. Bradshaw et al. define this model as follows:

“Strategies for management and governance based on this policy governance model look at the board’s role as a trustee on behalf of its communities and the board’s need to ensure responsiveness to these stakeholders through the articulation of a clear vision and set of values”.⁵⁴

There is a strong emphasis on the board’s responsibility for appointing, evaluating and terminating the services of the CEO, as the link between itself and staff.⁵⁵ A potential pitfall of this model is that the board may become removed from its constituency as it focuses on business goals.

2.5.2 The Constituent/ Representative Board Model

In the constituent/representative board model, the board normally acts for the constituencies or communities that the members represent, thus allowing constituents to take part in governance. One of its benefits is the decentralisation of the board, whose members represent constituents. However, the challenge here lies in reconciling different interests and keeping the various constituencies informed of organisational developments.⁵⁶ These are typical challenges of network organisations.

2.5.3 The Entrepreneurial Board Model

The entrepreneurial board model focuses strongly on entrepreneurship and market orientation. It allows for an organisation’s growing competitiveness in the business market and tends to rely more heavily on the sale of goods and services than on donations. As Bradshaw et al. put it: “Innovation is recognised as an opportunity to leverage proprietary gains”.⁵⁷ Efficiency and effectiveness are seen as the main ingredients of governance. This model entails less focus on social interests, and carries the risk that society’s broader needs may be overlooked.

2.5.4 The Emergent Cellular (Networking) Model

The emergent cellular (networking) model, which will be dealt with in more detail below, typically emerges when a number of organisations come together to pursue a shared purpose. Bradshaw et al. argue that “it is the combination of independence and interdependence that allows the cellular organisational form to generate and share the know-how that produces continuous innovation”.⁵⁸

2.6

AN OVERVIEW OF NETWORK GOVERNANCE

Both locally and internationally networks and networking organisations are increasingly being formed, and it is widely recognised that, for a number of reasons, this is an essential development.⁵⁹ Generally, these organisations are seen as pursuing common goals through collective action.⁶⁰ Networks take different forms, with their governance being bottom-up, top-down, or sometimes a combination of the two. Building effective networks is more easily said than done, as the literature makes clear.

Networks have been variously defined as

- a set of nodes and the relationships that connect them,⁶¹
- a set of nodes and the set of ties representing some relationship, or lack of relationship, between the nodes,⁶²
- the process resulting from our conscious efforts to build relationships with each other,⁶³ and
- non-hierarchical social systems that constitute the basic social form that permits an interorganisational coalition to develop.⁶⁴

Definitions of network governance are more elusive, given that there has not been as much research on this topic. However, Dedeurwaerdere suggests that “the aim of network governance is to create a synergy between different competencies and sources of knowledge in order to deal with complex and interlinked problems”.⁶⁵

Another definition, offered by Jones et al., is that “network governance involves a select, persistent and structured set of autonomous firms (as well as non-profit agencies) engaged in creating products or services based on implicit and open-ended contracts to adapt to environmental contingencies and to coordinate and safeguard exchanges. These contracts are socially, not legally, binding”.⁶⁶

Networks tend to be broadly defined in terms of relationships between stakeholders, and the concept of network governance becomes important when those relationships become more structured. Accordingly, the literature on network governance is more applicable to the national networking organisations that are the subject of this study.

2.6.1 The Emergence of Networks

Social networks have existed throughout human history. Members of hunter-gatherer groups in the Kalahari, for example, cooperated on the basis of trust and reciprocity.⁶⁷ Because of economic insecurity, political alienation and inadequate social services, networks are widespread in poorer communities.⁶⁸ In the more affluent social classes, people share knowledge and experience to further their careers and businesses.⁶⁹

At the most basic level, individuals form loose networks to provide mutual moral support and strengthen their influence.⁷⁰ Some scholars suggest that major social, economic and environmental issues drive the emergence of networks, which have become essential for addressing the complex challenges of the modern world.⁷¹

The motives for forming networks may differ. For example, intellectuals may form networks to heighten their impact on public policy, whereas civil society actors may want to increase their access to information and other resources, and the efficiency, credibility and presence of organisations.⁷²

Networks as legal entities are a recent development in South Africa. One reason may be that funding declined in the early years of democracy.⁷³ Another reason is the fact that the pre-1994 environment was not conducive to the development of progressive networking organisations.⁷⁴

2.6.2 Regional Influences on the Emergence of Networks

Historical, cultural, political, economic and institutional factors may also shape the development of networks in particular countries or regions. For example, a dictatorial regime in Brazil sparked the emergence of solidarity movements dedicated to the pursuit of democracy and social justice. These later developed into broader networks that expanded the interaction between government and civil society.⁷⁵

Governments, regional institutions and businesses may also make a concerted effort to increase networking.

2.6.3 Different Forms of Network Governance

Kenis and Provan,⁷⁶ leading scholars on network governance, identified three forms of network governance: shared governance networks, lead organisation networks and network administrative organisation networks. Each has different implications for NPOs.

Shared Governance Networks

In shared governance networks, the component organisations make strategic and operational decisions jointly. Governance of network activities is conducted and monitored through formal meetings or regular informal interactions. Such networks have no formal governance structures.

Lead Organisation Networks

As proposed by Kenis and Provan, lead organisation networks involve one organisation playing the lead role in promoting the network’s activities. The lead organisation takes on more responsibility, but also has more decision-making power, as it is responsible for coordinating activities and promoting relationships internally and externally. Reasons for the emergence of a lead organisation include the drive for more resources, influence and legitimacy.

Network Administrative Organisation Networks

Network administrative organisation networks are very similar to lead organisation networks, but they differ in that the lead organisation is not structured as a separate legal entity established specifically to coordinate and oversee the activities of the network. Its purpose is to support network leadership, rather than play an executive role, and it “may sometimes coexist with one of the other two”.⁷⁷

2.6.4 Factors Relevant to the Success of Different Network Governance Forms

Kenis and Provan⁷⁸ list four factors that they believe influence the success or otherwise of the various governance forms. They also suggest reasons why networks choose a particular governance structure and review the consequences of each structure. They maintain that the appropriate form of network governance must be chosen if networks are to be governed effectively, and that once this is done, any adverse consequences can be addressed.

They describe the four factors as follows:

- 1. Trust:** Trust is frequently identified as an important ingredient in the effectiveness and sustainability of networks. Kenis and Provan suggest that the degree of trust among a network’s members tends to determine the network governance form. When trust pervades the network, shared governance is likely to be the ideal form, because trust is widely distributed. The reason given is that “network governance must [accordingly] be consistent with the general level of trust density that occurs across the network as a whole”.⁷⁹
- 2. Size (number of members):** Networks face the inherent challenge of ensuring that the needs of all member organisations are addressed and activities are properly coordinated. Growing membership compounds this – the more members, the more complex the governance responsibility becomes. Shared governance becomes extremely difficult with a large membership (regular face-to-face meetings, for example, are more difficult to arrange).⁸⁰ For larger networks, the remaining options, which offer centralised governance, may be more appealing, as they allow networking without the need for regular meetings.⁸¹

- 3. Goal consensus:** When they have shared objectives, organisations are likely to invest more time and energy in working together and sharing governance responsibilities. Where there is less agreement on the main objectives, a lead organisation or network administrative organisation is likely to be the better option, as it makes strategic decisions.
- 4. Nature of task:**⁸² Organisations form networks in order to initiate more effective collective action. If this implies substantial interdependence, task-specific competencies are vitally important. This, in turn, means that shared governance may not be the ideal option, as specialised interventions by individual organisations may be required. A more skilled intervention requires a single focal point for coordination and action, but the best option may be to build skills within the network administrative organisation or lead organisation governance models.

2.6.5 Factors that Advance Network Governance

Various studies show that a number of capabilities are important for effective networks. As discussed earlier, choosing an appropriate governance model is of key importance in this regard. In a study that included 18 cases drawn from Africa, Asia, Latin America, the Pacific and the Caribbean, the European Centre for Development Policy Management (ECDPM)⁸³ identified 21 such capabilities, which it categorised as external, internal, technical and generative. The capabilities include:

- 1. Network leadership:** Given the complexity of networks, leaders are needed who can formulate a vision and strategic direction, identify opportunities, mobilise human capital and manage relationships.
- 2. Legitimacy and collective identity:** The study suggests that networks can only win legitimacy by meeting members’ expectations of effectiveness and efficiency. Interaction with the outside world is also important. However, there may be tensions between the need to maintain a collective identity by meeting members’ expectations and meeting the needs of the outside world.

3. **Technical expertise:** Networks must be able to bring together and use diverse skills, knowledge and capabilities. Access to these goes hand in hand with their pursuit of legitimacy. Networks must be able to optimise the diverse skills available among members at an organisational and individual level.
4. **Mobilising resources:** Without financial and other resources, networks may prove unsustainable. Bernard⁸⁴ suggests that networks need their own resources, beyond those available from individual members. They must be able to mobilise resources that will sustain their activities.
5. **Facilitating participation:** This goes to the core of a network's activities, as inadequate participation defeats the purpose for which it was formed. Members expect to have a meaningful role in decision-making processes such as setting the network's agenda and deciding on key interventions. To deepen participation, various innovative methods are available that networks can explore. The study says that network leaders should "be good at articulating a compelling vision, facilitating dialogue, forging shared agreement on priorities and operating principles, meeting the diverse needs of members, and ensuring that members benefit sufficiently from their engagement to ensure their continued involvement".⁸⁵
6. **Serving the network:** Depending on the network's size and nature, there may be times when the network requires dedicated support in order to serve the needs of members and to interact with them.⁸⁶

2.6.6 Typical Challenges and Tensions Faced by Networks

Networks face a number of key challenges, some of which are inherent in their organisational form.

Practical Challenges

Holmén⁸⁷ suggests that the disadvantages of networks are largely practical. One of the main challenges is that from the members' perspective, networking is a secondary activity that may not warrant much attention. Networking often requires budget allocations for which donors do not always provide funding. The active participation of all members is essential for a network's success.

Inherent Tensions in Networks

Creech⁸⁸ points to a number of creative tensions in networks, including those between⁸⁹

- the mandate of one organisation and those of its network partners,
- a closed membership and a more open network,
- a narrow focus on specific actions and the desire to serve a broader range of interests among all network members, and
- a fixed set of expectations defined by a funding proposal and the inevitable evolution of network interests that comes about through collaboration.

The Complexity of Networks⁹⁰

Networks entail the coordination of often-complex relationships between independent roleplayers. Thus, there must be a focus on building relationships among members.

Diversity of Networks⁹¹

Every network is unique, as it operates in a particular context and organisational culture. Networks also differ in "their purpose, substantive orientation, membership, size, scope, how they make decisions and govern themselves, their resource base, etc., all of which have consequences for addressing capacity issues".⁹² A one-size-fits-all approach, therefore, is not applicable to networks.

Fluidity and Life Cycles of Networks⁹³

Networks must be able to adapt to different operating styles and forms of intervention to remain vibrant and relevant to their context. Accordingly, they may pass through different evolutionary stages, like NPOs, with each stage bringing different challenges.

Balancing Power within Networks

The European Centre for Development Policy Management (ECDPM) recommends that "network managers, supportive consultants and donors need to be able to recognise, mobilise and nurture power and capabilities of informal leaders and experienced members throughout the network".⁹⁴

2.7

PRINCIPLES AND PRACTICE OF NON-PROFIT GOVERNANCE

The literature reviewed for this study repeatedly emphasises, as Miles et al. argue, that “organisations must adopt practices and accepted principles [in] their respective organisations in the context of their philosophy, culture, needs and resources”.⁹⁵ However, regardless of which governance model an NPO uses, adherence to certain core principles and an understanding of core governance obligations are essential for good non-profit governance⁹⁶.

Core obligations include the following:

- leadership (providing strategic direction),
- oversight (holding management and staff to performance targets),
- responsibility (ensuring compliance at all levels),
- ethics (ensuring that delivery and conduct comply with moral values),
- accountability (evaluating work against the organisation’s mission),
- transparency (keeping the public and others informed about the work), and
- succession planning (the recruitment, orientation and capacity building of new board members).

Researchers, academics and experts in the field of non-profit governance emphasise that boards should regularly reassess the way they operate and measure performance against best practice.⁹⁷

2.8

THE TEN BASIC RESPONSIBILITIES OF NON-PROFIT BOARDS

Challenges facing South African non-profit boards are common elsewhere. BoardSource⁹⁸ lists the basic responsibilities of non-profit boards in the United States, and these can be used as a good starting point for a discussion on effective governance and best practice. They are to⁹⁹

1. determine the organisation’s mission and purpose,
2. select the CEO,
3. support the CEO and review his/her performance,
4. ensure effective organisational planning,
5. ensure adequate resources,
6. manage resources effectively,
7. determine and monitor the goals of the organisation’s programmes and services,
8. enhance the organisation’s public image,
9. serve as a court of appeal, and
10. assess its performance.

The *Codes of Good Practice*, published by the NPO Directorate,¹⁰⁰ reflects the same measures of good practice identified above by BoardSource. Likewise, these principles are reflected in other South African governance-related resources.¹⁰¹

2.9

DIFFERENCES IN GOVERNANCE BETWEEN NATIONAL BODIES AND NETWORKING ORGANISATIONS

In *organisational governance*, the role of boards is often seen as that of acting for and safeguarding the interest of the broader public.¹⁰² Boards may be self-appointed or elected by a broader membership. *Network governance* involves a number of other entities, including individuals, that come together to promote collective action by members. However, research on network governance is still emerging and research specific to South Africa is almost non-existent.

While some international literature draws a distinction between organisational and network governance on the basis that the latter involves no legal entity,¹⁰³ this project views network

governance as a subcategory of organisational governance, defined as the governance of NPOs in general. It is critical to note that although the table that follows is helpful in distinguishing broadly between organisational and network governance in an international context, it does not fully reflect the South African reality in terms of network governance, in that many network organisations are legal entities. As a selection criterion for this study, directly related to the DSD’s mandate and to the objectives of this research, the network organisations sampled in this study are registered in terms of the NPO Act, which necessarily requires that they are formally constituted as legal entities.

Often, network organisations have developed extensive operating policies and provided for the appointment or election of a governing body. Bolger and Taschereau¹⁰⁴ emphasise that the categories they use to distinguish between networks and organisations (see Table 1 below) may encourage interpretations that ignore both the context and history of organisations, and leave out other factors that may have inspired them. They suggest that the definition of networks does not fit structures based on hierarchical control and accountability.¹⁰⁵

Networks	Organisations
Constituted through voluntary association of individuals and/or organisations to advance a cause or purpose. The relationship between members is fundamentally a social contract.	Mandated by a governing body, shareholders or members to achieve organisational objectives. While employees and managers may value the organisation’s objectives, the contractual relationship is fundamentally legal and/or financial.
Negotiated order and reciprocal accountability. Members share their ideas and engage in joint action, trusting that others will reciprocate. Participation is the core of what distinguishes a network from other organisational forms.	Hierarchical order and accountability to executives, governing board and the like is a key feature. Authority for decision-making and accountability ultimately rests at the top.
Networks are fluid and organic; they emerge, grow and adapt to achieve their purpose, to respond to members’ needs and to opportunities and challenges in the environment. Their trajectories and results are not easily predicted.	Organisations have codified functions and roles, and routine practices (job descriptions, policies, rules and procedures, standard operating manuals, strategic and operational plans), which allow them to deliver products and services with a relatively high level of predictability.
Informal relationships between members are as important as, if not more important than, formal structure. These are facilitated through information exchange, and creation of common spaces to share knowledge and experience (workshops, conferences, websites).	Formal organisational structuring of work is important in organisations, and much time is devoted to getting the structure right.

Table 1

2.10

COMPARING BEST PRACTICES AND CHALLENGES FOR ORGANISATIONAL GOVERNANCE IN VARIOUS COUNTRIES

2.10.1 The United States (US)

The largest study¹⁰⁶ of governance practices conducted in the US, summarised by Ostrower, found that NPOs face pressure to become more accountable and transparent, and that this has affected their policies and the role of board members. The study confirms that external factors can influence how an organisation approaches the formulation of its mission.

The following important findings from the study may be relevant to South Africa:

1. The legal and policy environment, including the Sarbanes-Oxley Act (2002), has significantly altered the governance landscape of NPOs in the US. The Act is mainly concerned with business governance, but many NPOs have followed its provisions. California¹⁰⁷ has adopted legislation for NPOs that mirrors the Act.
2. Certain practices¹⁰⁸ imposed on commercial entities by the Sarbanes-Oxley Act found their way into non-profit governance. For example, "having corporate members on the board was one of the most consistently influential factors and was positively associated with engagement in each of the six practices except having a document retention policy".¹⁰⁹
3. The findings with regard to particular NPOs do not automatically apply to the entire non-profit sector, as there are many variations. Ostrower therefore makes the following recommendation: "those proposing policy initiatives and good governance guidelines to strengthen non-profits must assess the differential impacts on various types of non-profits and weigh these carefully beforehand".¹¹⁰

4. One significant finding is that "best practice guidelines or adopting new policies will not be sufficient to strengthen board performance and accountability. The findings repeatedly emphasize the importance of various recruitment criteria and the ability to obtain board members willing and able to carry out board functions".¹¹¹ In other words, without the right board members to implement them, policies and guidelines may have a limited effect.
5. The study highlights the need for public and private campaigns to increase the availability of individuals to serve on non-profit boards because of the difficulties organisations encounter in recruiting board members. It recommends that "sound practices and policies must be coupled with investment in people, by helping non-profits obtain individuals willing and able to serve and implement those practices".¹¹²

2.10.2 Australia

A study¹¹³ of non-profit boards in Australia analysed such matters as the composition of boards, priority tasks and strategic skills such as networking. It found the following:

1. As in the US, legislative and funding requirements relating to non-profit boards are changing strategic thinking at board level. For example, the Corporate Law Economic Reform Programme of 1998, which introduced new governance practices for governing boards in the corporate sector, created expectations that had an effect on non-profit boards.
2. There is a link between the practices of NPOs and the calibre of directors recruited. Steane and Christie comment: "It suggests the inclusion of directors with these areas of (corporate) expertise in the composition of the board can affect a preference in the prioritisation of tasks that mimics a shareholder view of governance".¹¹⁴
3. As in the US, it is suggested¹¹⁵ that Australian NPOs are finding it increasingly difficult to recruit and retain directors. Steane and Christie give four main reasons: "First, there are increasing legal expectations of non-profit directors. Second, there is the increased publicity given to governance issues, in part driven by legal cases. Third, there are increased normative expectations of directors. Fourth, there are increasing social expectations of non-profits and their directors".¹¹⁶

A study by Hough et al.¹¹⁷ of Australian NPOs made similar recommendations, as follows:

1. The recruitment of non-profit board members is of key importance. In this, the legal environment plays an important role, requiring appropriate responses from legislators, regulators and NPOs at an appropriate level.
2. The incoherent approach to non-profit legislation should be addressed because: “More appropriate and facilitative regulation of the sector is needed”.¹¹⁸
3. Board recruitment warrants greater investment. Strategies to support and engage directors should be considered.

2.10.3 Canada

Evans et al. suggest¹¹⁹ that changes in the governance structures of Canadian NPOs have sparked significant changes in the sector. In particular, they suggest that the introduction of neoliberal governance structures compromised their autonomy and advocacy functions, and strained capacity:

“The neoliberal model of market-based regulation has moved many nonprofit service organisations away from their community-oriented focus and towards a ‘business model’. In various forms, the state has introduced quasi-markets or, at a minimum, required NPOs to engage in more competitive practices with negative consequences for nonprofit mission, culture and labour-management practices. The result is a growing level of instability within the sector”.¹²⁰

The changes that the Canadian government introduced were to¹²¹

- emphasise management and performance measurements, leading to a corresponding decline in policy work,
- employ a disaggregated approach to public sector management, entailing attempts to introduce and/or increase competition within the public sector,
- emphasise fiscal constraint,
- stress the importation of private sector business practice, and
- deregulate in favour of markets.

Funding for NPOs became project based, short-term and outcomes intensive. Contract funding of this kind has had significant implications for Canadian NPOs, as it has¹²²

- redefined their missions from time to time to meet the requirements of short-term funding,
- commercialised their activities to make up for funding shortfalls, most often by charging fees for services,
- reduced organisational effectiveness, as more and more energy is spent on securing sufficient income,
- increased organisational instability, and
- decreased long-term planning because of growing financial instability.

One of Canada’s most comprehensive studies¹²³ outlines a number of best practices successfully adopted by the country’s NPOs. These are examples of what effective recruitment and orientation can encompass, and of suitable policies and guidelines:

1. Persuade the board to appreciate the need for change and support improved governance practices.¹²⁴ An assessment can galvanise the board into realising that better governance practices are needed to face the challenges in the sector.
2. Employ effective recruitment of new board members and implement effective succession planning.¹²⁵ One best practice involved delegating the recruitment of board members and succession planning to a nominating committee. In some organisations, everyone took part in identifying potential board members.
3. Be clear and honest about what is expected from board members. Arranging for the CEO or chairperson to meet new board members is important in setting the tone. A full tour of the organisation should be provided and staff should be given the opportunity to make presentations to new board members.¹²⁶
4. Provide new board members with a board manual and training so that they can fulfil their roles.¹²⁷
5. Develop written policies on organisational risk and acquire adequate insurance cover. Conduct a complete risk assessment and have it assessed externally. The area of risk thus receives the board’s ongoing attention.¹²⁸

2.11

COMPARING BEST PRACTICES IN NETWORK GOVERNANCE IN VARIOUS COUNTRIES

This section considers best practices adopted by networking organisations in four countries.¹³⁵

2.11.1 Canada

After reviewing seven umbrella or network organisations in Canada, Edgar¹³⁶ found a direct link between members' commitment to the network and membership fees, and a clear connection between a network's effectiveness and its governance structures and credibility.

The following effective network governance practices were identified:

2.10.4 Mozambique

An examination of the governance of civil society organisations (CSOs) in Mozambique raised similar issues to those identified in Canada. In a discussion paper, Stefano Bellucci¹²⁹ argues that social policies must be considered in analysing NGOs and their governance. Mozambique's first multiparty elections in 1994 and new constitution have resulted in greater freedom of association in that country¹³⁰.

As in South Africa, Mozambican NGOs have grown in number and received substantial international funding, which is aimed at improving their governance practices. Bellucci argues that the government's adoption of neoliberal policies has prompted NGOs to adopt an economic approach to governance,¹³¹ with the following significant implications:

1. Constituencies are less well represented in NPOs. Bellucci says that: "Local NGOs claim to represent the interests of all citizens in Mozambique, but, from this research, it appears that they choose their staff members on the basis of selective recruitment procedures as though they were business initiatives".¹³²
2. NGOs risk being run like businesses, with less emphasis on what constituents require. "One conclusion to be drawn is that leaders of NGOs are like senior professionals in private firms".¹³³
3. Exposure to short-term funding has resulted in an inability to focus on longer-term strategic planning. As Bellucci says: "In this situation, planning is very likely to be regulated from outside forces, given that these donations are not always guaranteed in advance and in sufficient amounts. This uncertainty makes it more difficult for NGOs to implement their policies and they are often forced to function on a project-by-project basis".¹³⁴

1. Sound governance, organisational stability and the capacity to mobilise human capital effectively are good practices that enable organisations to enhance their credibility in relation to external roleplayers.
2. There should be clear rules for decision-making, and an awareness of different member decision-making processes and the traditional values of different cultures.
3. An atmosphere conducive to collaborative policy formulation between networks and government is needed, given that networks get core funding from government.
4. AGMs and conferences are the best forums for networks to identify policy priorities. Such interactive platforms produce the necessary resolutions for the governance structure to conduct the following year's activities, although these should be flexible enough to allow for changes in the external environment.
5. Hold regular educational sessions with those responsible for the governance of the network, to improve the effectiveness of the network and raise its profile.
6. The roles and responsibilities of the governance structures of all the participating organisations are set out in their policy documents, and their members are elected at AGMs or at regional level.

2.11.2 Brazil

A 2004 study¹³⁷ examined the factors contributing to effective network governance in Brazil's *Comitê de Entidades no Combate à Fome e pela Vida*¹³⁸ (COEP), which is a nationwide group of networks dedicated to creating a just and inclusive society free of hunger and poverty. Comprising 20 field cases, the study made a number of significant findings.

The study identified the following best practices:

1. The maintenance of the principles of ethical conduct and transparency was enshrined in the network's statutes, promoting the accountability of leaders to members.
2. The ability to adapt to changing circumstances was identified, which in COEP's case is the result of creative leadership structures.
3. Regular training and development was provided, which included a university course on project methodology.
4. Network participants accepted the network's values, mission and objectives. This is a unifying force and a key ingredient in COEP's success.
5. Extensive use is made of electronic forms of communication to promote accountability, disseminate information and offer electronic distance education.

COEP is a good example of how creativity and innovation can result in an effective network. Its approach may not be relevant in other contexts, but its leadership has considered local conditions in developing a successful strategy. The network nurtured its internal resources in a way that promoted commitment to its unifying mission. In addition, its culture of continuous learning kept it at the cutting edge of developments.

2.11.3 Malawi

In 2006, James and Malunga¹³⁹ published the findings of research among four non-profit networks in Malawi. The research was aimed at understanding the development of CSOs, and assessing their contribution to poverty reduction and their strengths and weaknesses.

Their findings were as follows:

1. A lack of organisational identity was identified as the biggest challenge facing the four networks in the study.
2. Increased funding has made networks more independent, creating distance between network structures and their members.¹⁴⁰
3. The lack of effective leadership, in turn, was reflected in the networks' performance.
4. There was a lack of focus on strategic leadership and excessive focus on non-policy issues.
5. There was a lack of strategic vision, leading the organisations to respond to a broad range of issues without much clarity.
6. Funding was predominantly for international donors, with the levying of membership fees being the exception rather than the rule. This has reduced the accountability of networks to their members.
7. Donors wanted quick results, and gave no commitment to investing in capacity building.
8. Because they lack resources, member organisations focus on their own survival, rather than on investing time and resources in network activities.
9. The lack of resources has also fuelled a lack of capacity in governance structures.
10. The organisations are accountable to the source of funding – external donors – rather than to members.

In their recommendations, James and Malunga¹⁴¹ identify identity and leadership as the key issues that must be addressed in Malawi's network crisis. In clarifying their identity, networks face the strategic choice of either becoming more independent from members or re-asserting their commitment to members and becoming 'authentic' network organisations. The latter would require them to build the capacity of regional office staff and allow members to participate in the network's activities and decision-making processes.¹⁴²

On the leadership issue, James and Malunga propose the appointment of skilled network leaders/managers that can improve relationships, engage in strategic planning, analyse the environment and use their skills of persuasion. The development of collective leadership should also receive high priority, and the active participation of boards should be encouraged.

The study's findings and recommendations are significant in that these challenges are not unique to Malawi. The findings underscore the link between the external funding environment and the internal governance structures of networks.

2.11.4 India

Reviewing five networking organisations in Andhra Pradesh and Karnataka, India, Eswara and Anuradha Prasad¹⁴³ identified the following key enabling factors:

1. The network has a clearly articulated focus, which is determined at the outset.
2. Network members are clear about the network's purpose and have a sense of ownership.
3. Respect among network members is encouraged.
4. Members are willing to learn from one another.
5. Members are encouraged to express their mutual concerns.
6. Social interaction among members is promoted.
7. The professional structure is balanced by its family character.

In their recommendations, Prasad and Prasad lay much emphasis on building effective relationships among network members. The need for the network's purpose to be clearly defined and embraced by members is a common thread in the international literature.

2.12

THE CHALLENGES FACED BY SOUTH AFRICAN NON-PROFIT BOARDS

Much like its international counterparts, the South African non-profit sector is not exempt from challenges. In an insightful research study of South African non-profit boards by Camay and Gordon,¹⁴⁴ the ten challenges identified as significantly affecting effective governance in NPOs were

1. regular review by the board of the organisational vision and mission, with appropriate repositioning as required,
2. transformation and restructuring of both organisations and their boards,
3. recruitment and empowerment of board members in order to build a representative, diverse, capacitated and committed board,
4. adapting to keep aligned with stakeholder needs, policy shifts and trends in service provision,
5. regular self-evaluation of the board and CEO,
6. consistent review of the effectiveness and cost-efficiency of both the board and the organisation to ensure improved impact,
7. a commitment to achieving financial sustainability,
8. in respect of membership organisations, the recruitment of new members and managing the changing priorities of existing members,
9. to search for new measures in interacting with stakeholders, and
10. coping with the nature and pace of organisational changes.

CONCLUSION

The review of the literature shows that international standards are established and generally accepted for what is considered 'best practice' in non-profit governance. The literature highlights commonalities in best practice for, and challenges to, non-profit governance, and reflects similarities in both internal and external factors that affect organisational capacity to achieve good governance.

This review points to the emerging literature that draws a distinction between 'traditional' non-profit governance, or organisational governance, and network governance. A number of distinct governance models have been adopted by non-profit organisations, and the literature serves to emphasise the risk in proposing a one-size-fit-all solution for the two forms of target organisations considered in this research.

In comparing practices in other countries, it is apparent that developments in the external environment affect governance practices within non-profit organisations. Key external factors involve pressures on the non-profit sector to become service-delivery agents and to engage in profit-making commercial activities. Short-term funding also has become more popular as a donor funding strategy, which affects the ability of organisations to do long-term planning.

Any interventions aimed at improving the governance practices of the target organisations must take into account the full spectrum of relevant external factors. Of particular interest in the literature is the identification of the key shortcomings of particular governance models, and the clear suggestion that these shortcomings, linked to context and external factors, must be addressed to improve the governance practices of organisations.

Endnotes

- ²⁸ Putnam (1993).
- ²⁹ The study was based on the results of a census of all national and local associations in Italy. It was, therefore, able to compare associations in terms of the precise numbers and their nature (*ibid.*, p. 91).
- ³⁰ *Ibid.*, p. 87.
- ³¹ *Ibid.*, p. 88.
- ³² *Ibid.*, p. 98.
- ³³ *Ibid.*, p. 99.
- ³⁴ *Ibid.*
- ³⁵ *Ibid.*, p. 102.
- ³⁶ While this approach is by no means universal, this literature review does not deal with the full range of diverse views on the matter.
- ³⁷ Setianto (2007).
- ³⁸ "When a variety of civil society organisations emerge, some may be arms of the market, such as business associations and entrepreneur organisations; others may be arms of the state, such as government-owned non-governmental organisations (GONGO). Salamon terms this space between the state and the market the third sector" (*ibid.*, p. 117).
- ³⁹ *Ibid.*
- ⁴⁰ "...voluntary associative relations dominate civil society. As a consequence, civil society is a sphere of free public debate. Civil society is thus more than associations, because any association might be influenced by the market or the state (Warren, 1999). Rather, the members of civil society organisations hold diverse interests. As a result, civil society's pluralism is maintained" (*ibid.*).
- ⁴¹ UNDP (1997).
- ⁴² Coghill (2002, p.2).
- ⁴³ *Ibid.*, p.2.
- ⁴⁴ Morck & Steier (2005, p. 2).
- ⁴⁵ Knott (2002, p. 4).
- ⁴⁶ World Bank (1999, p.vi)
- ⁴⁷ The King Committee was formed in 1993 to review and make recommendations about corporate governance in South Africa. This resulted in the publication of the *King Report* in 1994. The *King Report* promoted an integrated approach on good governance for corporations, with the goal of responding to the interests of a wider range of stakeholders, beyond merely the shareholders, and embracing the principles of good financial, social and ethical and environmental practice. An updated report was published during 2002 (called the *King II Report on Corporate Governance*). This report makes recommendations on good governance principles beyond those contained in the Companies Act (No. 61 of 1973).
- ⁴⁸ The *King II Report* recommends that businesses report to the broader public in accordance with a triple bottom line that goes beyond financial reports and includes social, economic and environmental aspects.
- ⁴⁹ Hailey & James (2004).

- ⁵⁰ Lloyd (2005).
- ⁵¹ Ibid., p. 3.
- ⁵² Ibid.
- ⁵³ Patra (2007, p.1).
- ⁵⁴ Bradshaw et al. (1998, p. 6).
- ⁵⁵ Carver (2006).
- ⁵⁶ In the words of Bradshaw et al. (1998, p. 15): “With representative interests and positions, there is a tendency to pursue self-preservation rather than shared interests”.
- ⁵⁷ Ibid., p. 16.
- ⁵⁸ Miles et al. (1997) quoted in Bradshaw et al. (1998, p. 1).
- ⁵⁹ For example, see Ballard (2005; 2006).
- ⁶⁰ A recent example of such recognition was the gathering of leaders and representatives of NGOs at the World Congress of NGOs, in Toronto, Canada, in November 2007. The meeting affirmed 12 core values that should underpin the work of the Third Sector (The Toronto Declaration of NGO Core Values, 2009). The Fifth Value reads: “NGOs have a shared responsibility to address the serious challenges confronting humanity. Significant progress toward world peace and global well-being can be fostered through inter-religious, intercultural, and interracial work, and across artificial barriers of politics, race, and ethnicity that tend to separate people and their institutions. NGOs should maintain ethical, cooperative relationships with other NGOs, and should partner where possible and appropriate for the sake of the greater public good. An NGO should be willing to work beyond these borders, within the limits of its organising documents and with organisations and individuals that share common values and objectives.”
- ⁶¹ Grandori & Soda (1995).
- ⁶² Brass et al. (2004).
- ⁶³ Networks are more or less formal, and more or less durable relational patterns emerge as a result of such efforts. The core business is not the manufacture of products or the provision of services, but social learning, communication and the making of meaning (Engel & Van Zee, 2004).
- ⁶⁴ Carley & Christie (2000).
- ⁶⁵ Dedeurwaerdere (2005).
- ⁶⁶ Jones *et al.* (1997).
- ⁶⁷ Stephenson (2004, p. 10).
- ⁶⁸ Wenger (1998).
- ⁶⁹ Ibid.
- ⁷⁰ Ibid., p. 6.
- ⁷¹ Liebler & Ferri (2004).
- ⁷² Ibid., p. 4.
- ⁷³ Julie (2009, p. 8).
- ⁷⁴ Networks clearly did exist before 1994, but were not in the form of legal entities as envisaged in this study.
- ⁷⁵ De Campos & Hauck (2005).
- ⁷⁶ Kenis & Provan (2007, p. 234).
- ⁷⁷ Provan et al. (2007, p. 25).
- ⁷⁸ Kenis & Provan (2007, p. 237).
- ⁷⁹ Ibid., p. 238.
- ⁸⁰ Shared governance is, accordingly, a more suitable option for smaller networks that have fewer members.
- ⁸¹ Regular face-to-face interaction among members is not essential for network administrative organisation and lead organisation networks, as governance and communication can be conducted through the central structure.
- ⁸² This factor relates to “the nature of the task being performed by the network and the external demands and needs being faced by the network” (Kenis & Provan 2007, pp. 234–236).
- ⁸³ Bolger & Taschereau (2006).
- ⁸⁴ Bernard (1996).
- ⁸⁵ Ibid.
- ⁸⁶ Some networks have resolved this by appointing dedicated network secretariats. This may also take the form of a network administrative organisation, as discussed above, or of a lead organisation that takes over this function.
- ⁸⁷ Holmén (2002).
- ⁸⁸ Creech (2001).
- ⁸⁹ Ibid., p. 1.
- ⁹⁰ Bolger & Taschereau (2006).
- ⁹¹ Ibid., p. 22.
- ⁹² Ibid., p. 22.
- ⁹³ Ibid., p. 22.
- ⁹⁴ Ibid., p. 22.
- ⁹⁵ Miles (1997., p. 2).
- ⁹⁶ Ibid.
- ⁹⁷ For example, see Inyathelo’s *The Board Walk: Good Governance Guides* – a series of Good Governance booklets that outline important factors and practices in ensuring good governance in non-profit organisations (Wyngaard 2009a, 2009b; Hendricks 2009).
- ⁹⁸ BoardSource is an NPO based in Washington DC. It was previously known as the National Center for Non-profit Boards.
- ⁹⁹ Ingram (1996).
- ¹⁰⁰ *Codes of Good Practice for South African Non-profit Organisations (NPOs)*, pp. 11–13 – see References section of this Report.
- ¹⁰¹ See, for example, Wyngaard (2009a, 2009b) and Hendricks (2009).
- ¹⁰² See, for example, Kenis & Provan (2007, p. 230).
- ¹⁰³ See for example Kenis & Provan (2007, p. 5), who state: “The most obvious reason for this is that networks are ... essentially cooperative endeavours. Since networks are not legal entities, the legal imperative for governance is simply not present as it is for organisations”.
- ¹⁰⁴ Bolger & Taschereau (2006, p. 4).
- ¹⁰⁵ Ibid.
- ¹⁰⁶ Over 5 100 NPOs of varied size, type and location participated in this study, providing the largest sample yet studied. Ostrower (2007, p. 1) states: “Attention to the influence of organisational environments on boards has declined significantly in the board research literature,

and when attention is given, it is typically to the financial context. Funding relations are important, but the environment includes far more. As organisational theorists remind us, non-profits face normative pressures to adopt certain policies and practices in order to demonstrate their public legitimacy. Non-profits today are facing pressures to be more accountable and transparent, which has had a profound impact on discussions of appropriate board roles and policies”.

¹⁰⁷ The California Non-profit Integrity Act of 2004 compels NPOs with gross revenues of US\$2 million or more to have an audit committee. This has been voluntarily adopted by some NPOs. Efforts to extend provisions of the Act to non-profit bodies have been met with objections and concerns about the impact on smaller organisations.

¹⁰⁸ Ostrower (2007, p. 4) lists the following: 1. Having an external audit. 2. Having an independent audit committee. 3. Rotating audit firms and/or lead partners every five years. 4. Having a written conflict of interest policy. 5. Having a formal process for employees to report complaints without retaliation (whistleblower policy). 6. Having a document destruction and retention policy.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid., p. 23.

¹¹² Ibid., p. 23.

¹¹³ Steane & Christie (2000). This article reports the findings regarding patterns of governance in non-profit boards in Australia. The research surveys 118 boards, on which a total of 1 405 directors serve.

¹¹⁴ Ibid., p. 16.

¹¹⁵ Hough et al. (2006, p. 1). Similar trends have also been identified in the US and UK.

¹¹⁶ Steane & Christie (2000, p. 6).

¹¹⁷ Hough et al. (2006, pp. 11–12).

¹¹⁸ Ibid., p. 11.

¹¹⁹ Evans et al. (2005, p. 73).

¹²⁰ Ibid.

¹²¹ Ibid., p. 77.

¹²² Ibid.

¹²³ Bugg et al. (2006).

¹²⁴ Ibid., p. 70.

¹²⁵ Ibid., p. 71.

¹²⁶ Ibid., p. 72.

¹²⁷ Ibid., p. 73.

¹²⁸ Ibid., p. 78.

¹²⁹ Bellucci (2002).

¹³⁰ Ibid., p. 13.

¹³¹ Ibid., p. 25. The following conclusion is drawn:

“Currently, as shown by the survey, the civil society in Mozambique adopts the mode of economic behaviour prevalent in this approach (i.e. NGOs operate like homo economicus). For this reason, if the promotion of ‘ethical and democratic values’ (and not only economic and democratic values), according to UNESCO’s [United Nations Educational, Scientific and Cultural Organisation]

definition of governance, must be achieved, it is necessary to promote a ‘political society’ together with the civil society. The public realm referred to in the governance approach of political development should be enhanced by this new way of looking at the society. To avoid economic and therefore political hegemony of organised civil society (NGOs) over the entire society or public realm, the ethical dimension must be given its place. By promoting the concept of political society, UNESCO will certainly contribute to the establishment of governance structures and mechanisms in its field of competence”.

¹³² Ibid., p. 20.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ These countries were selected taking into account geographic spread, whether or not they respect the rule of law, and whether or not they provide an enabling environment for the non-profit sector.

¹³⁶ Edgar (2002). The organisations that were examined included the Canadian Council for International Co-operation, the National Action Committee on the Status of Women, the Canadian AIDS Society (CAS), the National Audubon Society, Amnesty International Canada – English Speaking, New Brunswick Environmental Network, and the First Nations Environmental Network. The relationship between the government and environmental NGOs in the Netherlands was also reviewed

¹³⁷ Saxby (2004).

¹³⁸ In contrast with the organisations in the Canadian study, discussed above, COEP is not formally registered and has a non-hierarchical method of operation aimed at encouraging participation. It has over 800 organisations in the network, which consists of both individuals and organisations. Recognition is given to the fact that individuals make up the core of the network. However, institutional members play a very important role in providing financial support, and the network is further supported by a reliable communications structure.

¹³⁹ James & Malunga (2006).

¹⁴⁰ “It has reached the stage where the most important question that network leadership and governance needs to answer is: will we remain as an authentic CSO network or become an advocacy NGO with nominal membership?” (ibid., p. 50).

¹⁴¹ Ibid., pp. 58–60.

¹⁴² Further recommendations include the development of membership criteria and protocols, promoting the use of resources of members in support of networks, involving members in the development of strategy and clarifying responsibilities in governance structures.

¹⁴³ Prasad & Prasad (2006). This paper is based on evaluation studies and change management work with five NGO networks in Andhra Pradesh and Karnataka.

¹⁴⁴ Camay & Gordon (2002).

LEGISLATION, REGULATIONS AND POLICY

3

Internationally, it has been determined that three kinds of legal provision promote an enabling environment for NPOs.

These are laws that

1. regulate the launching of NPOs in an easy and inexpensive manner,
2. allow NPOs to operate independently from the state, and
3. promote *capacity building* in the non-profit sector.¹⁴⁵

In addition, legislation should set standards of good governance and accountability, and give organisations direct or indirect access to funding, for example through tax benefits.

An overview of the legislative environment governing the non-profit sector in South Africa is provided here to assist in determining the extent to which the South African environment is an enabling one in terms of the three factors outlined above.

3.1

THE NONPROFIT ORGANISATIONS ACT (NO. 71 OF 1997) – THE NPO ACT

The NPO Act seeks to create an enabling environment for NPOs and provides for them to register. The Act makes no explicit reference to the organisations targeted by this study, and refers to NPOs in general. For example, the functions of the NPO Directorate include “to ensure that the standard of governance within nonprofit organisations is maintained and improved”.¹⁴⁶

The NPO Act is a limited instrument that prescribes measures designed to improve the governance practices of NPOs. For example, the Directorate must “prepare and issue model documents, including model constitutions for nonprofit organisations”¹⁴⁷. Broadly interpreted, this may include the preparation and issuing of model documents, including model constitutions, for national non-profit bodies and network organisations. It is, however, clear that the Directorate has not been given the resources to explore the Act’s potential in relation to the target organisations. Commissioning this research is a step in the right direction.

The appointment of an advisory or technical committee, as envisaged by Section 10 of the Act, is also relevant to the needs of the target organisations. However, Section 3 makes the most significant provision for the non-profit sector. It 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 nonprofit organisations to perform their functions”.¹⁴⁸

Section 3 confirms that the legislation binds the state. The Act also requires all those applying the legislation to give a liberal interpretation to its provisions, in a manner consistent with

its purpose. Read as such, the Act therefore addresses governance practice in that boards and their development are central to “promoting, supporting and enhancing the capacity of NPOs to perform their functions”.

3.2

NATIONAL WELFARE ACT (NO. 100 OF 1978) – THE NWA

The National Welfare Act has been amended in terms of the Transfer of Powers and Duties of the State President Act (No. 97 of 1986), and subsequently also by Proclamations R40 of 1994 and R7 of 1996, but it remains on the statute book and thus still remains in force.

It is under this Act that provision is made for, *inter alia*, a South African Welfare Council and Regional Welfare Boards, and certain committees of such Boards. It also provides for various welfare programmes and for the registration of so-called welfare organisations. However, the Social Assistance Act (SAA) (No. 13 of 2004), as amended, now governs some of the areas previously legislated under the NWA. The SAA provides specifically for social grants and other forms of social assistance, and it provides for the establishment of an Inspectorate for Social Assistance and for various administrative and incidental matters.

In Chapter 2, the NWA makes provision for the “Registration of Welfare Organisations” (apart from other forms of registration that may be required, e.g. in terms of the NPO Act), and it also defines “Social Welfare Services” in Section 1. However, this definition has not been updated to take into account subsequent legislation (in particular, Section 18A of the Income Tax Act, No. 58 of 1962, which defines “Public Benefit Activities” but only for fiscal purposes, and includes the categories “Welfare and Humanitarian”).

3.3

THE TRUST PROPERTY CONTROL ACT (NO. 57 OF 1988) – THE TRUST ACT

Non-profit trusts must be registered in terms of the Trust Act. A trust is a flexible legal structure that can be used for a variety of purposes. It is formed when ownership of property is transferred by written agreement, testamentary writing or court order to another party, to be administered for the benefit of certain persons or for the achievement of a particular goal.

The Master of the High Court, the custodian of trust instruments, oversees the appointment of trustees and, in theory, polices the performance of the trustees' duties. However, a trust can be set up with a membership structure in which members are responsible for appointing trustees. The trust is governed by a board of trustees appointed by the trust deed.

Given its legal flexibility, the trust is a potentially suitable form for the target organisations.

Registration under the NWA is particularly significant in terms of eligibility for State funding and for purposes of other legislation (e.g. the Value-added Tax Act, No. of 1991). In addition to registration as required by the NWA, the original enactment of Section 30 of the Income Tax Act required, as a pre-condition for tax exemption as a "Public Benefit Organisation", that organisations also be registered in terms of the NPO Act. Although, in terms of the NPO Act, registration is "voluntary" insofar as eligibility for public benefit organisation status is concerned, such registration is required, *inter alia*, for eligibility for benefits granted under the NWA Act, the Lotteries Act (No 57 of 1997) and other local authority and social assistance legislation.

In Section 1, the NWA defines a "national council" (as distinct from the South African Welfare Council) as:

"any organisation which in terms of its constitution has been established to organize and represent on a national or provincial basis welfare organisations pursuing objects which correspond substantially, and to promote, propagate and co-ordinate the interests, objects and activities of such welfare organisations and to act in an advisory capacity for such organisations".¹⁴⁹

The NWA is silent on any aspects pertaining to governance of a national council. The Act was primarily concerned with the funding of welfare organisations although, in practice, entrenching racial segregation¹⁵⁰ in that it provided for grants to any national council¹⁵¹ that organised or represented welfare organisations nationally, subject to conditions. The NWA was promulgated in the same year as the (now repealed) Fundraising Act (No. 107 of 1978), which was designed by the apartheid government to curb the funding of progressive organisations.

This brief review of the NWA with relevance to NPO governance indicates that:

- Legal compliance in terms of registration under various Acts is onerous and potentially confusing.
- The historical differences between national non-profit bodies and national networking organisations (also with regard to their relationship with government) flow from this.¹⁵²

3.4

THE COMPANIES ACT (NO. 61 OF 1973) – THE COMPANIES ACT¹⁵³

Section 21 of the Companies Act provides for the formation of a non-profit company. A Section 21 company can be formed for the purposes of promoting any cultural or social activity or communal or group interest, including a religion or an artistic, scientific, educational, charitable or recreational pursuit. Many jurisdictions recognise that NPOs do not have shareholders, as they do not issue share capital.

The Companies Act requires Section 21 companies to have at least seven members and two directors. The members may be natural or juristic persons, or representatives or nominees of other institutions, such as government departments, and may be foreign citizens. Section 21 companies have a more complicated structure than voluntary associations or non-profit trusts. They also involve more legal formalities.

These legal requirements would certainly promote the internal and external accountability of organisations examined in this study. However, they also pose a potential risk to an organisation's reputation if it cannot comply with the requirements. A body corporate cannot be a director of a Section 21 company, meaning that network partners could not serve as directors. Individuals can, however, be appointed if they represent particular members.

A Section 21 company is an independent legal personality, separate from its members, implying that a target organisation would have a separate legal identity once it is constituted in this way. Although Section 21 status does have its advantages for the organisation, it is inherently problematic for the non-profit sector as it follows governance principles and a format developed for commercial firms.

The treatment of conflicts of interest in the Companies Act is particularly important for network organisations. The Act aims to prevent conflicts between the interests of the company and those of a director. If a network is established as a Section 21 company, the directors (who serve on different boards) could face a conflict between the interests of the network company and those of a member organisation. In this case, the director would have a fiduciary duty to both organisations. For example, a network organisation may compete with its network member for funding from the same donor. The director must declare and provide full details for the record of any interest in a contract or proposed contract, including donor contracts.

The Companies Act recognises a two-tier governing structure for companies, for members (shareholders) and directors. Only the governing board has fiduciary responsibility. Although the members are the highest decision-making body, acting and taking decisions through general meetings, the general members do not carry fiduciary responsibility. The board must exercise its governance responsibilities in accordance with the resolutions issued by the members in general meetings.

An AGM must be called at least once a year and take place within nine months of the company's financial year-end. The company can decide not to hold an AGM if all the members entitled to attend agree in writing and sign a resolution addressing all matters to be dealt with at the meeting. The main business of the AGM includes appointing directors, considering the directors' report, approving financial statements and appointing auditors.

The Section 21 company structure may be a legal option for the target organisations. However, the complicated nature of the legislation, and therefore the requirements for compliance, place a significant burden on their governance structures.

3.5

**THE INCOME TAX ACT
(NO. 58 OF 1962)**

The Income Tax Act is very relevant to the non-profit sector because of the potential benefits that it offers NPOs, principally in terms of income tax exemption and donors' ability to make deductible contributions to them.

To access these tax benefits, NPOs must become approved public benefit organisations (PBOs). Once they have this approval, PBOs must comply with a number of conditions under Sections 10(1)(cN), 18A (if applicable) and 30.

A PBO must conduct at least one public benefit activity. Its activities also must be conducted in a not-for-profit manner and no activity can promote the economic self-interest of any fiduciary officer or employee, other than reasonable remuneration to employees or officers.

A number of provisions have been included in Section 30 that aim to ensure that the funds of the PBO are used for the public benefit objective of the organisation and are not abused. These provisions would certainly contribute to more effective governance practices in the target organisations, as PBOs stand to lose their tax benefits if they fail to comply with them.

Section 30(3B) of the Income Tax Act provides the Commissioner of the South African Revenue Service (SARS) with the discretion to grant tax exemption to any group of organisations sharing a common purpose. The group's activities must be carried out under the supervision of a regulating or coordinating body. The coordinating body must also submit, with its tax return, a certified report that all the entities that were granted approval complied with Section 30 of the Income Tax Act. The implication here is that one entity will accept more oversight responsibilities in relation to SARS. This would be relevant to some national bodies where the regional structures are set up as separate entities.

Section 30(3B) may also be of relevance to national networking organisations pursuing a common purpose. A lead organisation would have to be established to ensure compliance. However, group registration may be a challenge with organisations that have a large membership, as it would place a considerable administrative burden on the coordinating body.

3.6

**THE SKILLS
DEVELOPMENT LEVIES
ACT (NO. 9 OF 1999)**

Section 4(d) of the Skills Development Levies Act provides for certain approved PBOs to be exempt from paying the skills development levy. The PBO must engage in any of the prescribed approved public benefit activities (as contemplated in paragraphs 1, 2(a), (b), (c) and (d) and 5 of Part I of the Ninth Schedule to the Income Tax Act), or it must provide funds solely to a PBO that engages in such prescribed public benefit activities.

In the 2007 Budget Review, it was suggested by SARS that PBOs do not fully participate in this developmental facility. The reason for this was not given, but it appears that the exemption from payment of the skills development levy has resulted in the exclusion of PBOs from this skills development initiative. This was not the intention behind the exemption contained in Section 4(d) of the Act.

3.7

THE PUBLIC FINANCE MANAGEMENT ACT (NO. 1 OF 1999) – THE PFMA

The PFMA is relevant to the non-profit sector for a number of reasons. Its object, as stated in Section 2, is “to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which this Act applies¹⁵⁴”. Its Preamble states that its purpose is “to regulate financial management in the national government and provincial governments”.¹⁵⁵

Section 38(1)(a) of the PFMA places an obligation on the accounting officers of state departments to maintain effective, efficient and transparent systems of financial and risk management and internal control and appropriate procurement system that are fair, equitable, transparent, competitive and cost-effective. Section 38(1) (j) provides that if a government department transfers:

“any funds (other than grants in terms of the annual Division of Revenue Act or to a constitutional institution) to an entity within or outside government, [the accounting officer] must obtain a written assurance from the entity that that entity implements effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems”.¹⁵⁶

In 1998, the Center for Civil Society at the Johns Hopkins University found that 42 per cent of the South African non-profit sector’s revenue comes from government, with 33 per cent being generated by private fees, dues and investments, and 25 per cent coming from private philanthropists.¹⁵⁷ The implication is that the PFMA applies to the non-profit sector, as it effectively prescribes the conditions under which

the sector can receive state funding. Funding of the non-profit sector must comply with the standards prescribed by the Act and regulations promulgated under it. An important reason given for this is as follows:

“Government departments are expected to draft strategic plans against which the allocation and utilisation of resources should be measured. Therefore, services that are not aligned to the strategic priorities of government department as outlined in their respective strategic plan will not be supported with funding from the two government departments”.¹⁵⁸

3.8

THE ADVISORY BOARD ON SOCIAL DEVELOPMENT ACT (NO. 3 OF 2001) – THE ADVISORY BOARD ACT

The Advisory Board Act is potentially important for the non-profit sector, as it would provide a national forum where civil society can interact with the DSD on matters pertaining to social development. The Act’s Preamble states that the board’s aim is one of “building and consolidating partnership between government and civil society”.¹⁵⁹ Whether such a board has been appointed is unclear. The department’s 2008–2010 strategic plan confirms that the Advisory Board Act forms part of its mandate, but reveals nothing further.

The Act was preceded by the introduction of the Developmental Welfare Governance Bill of 2000, the aim of which was to create a partnership between all stakeholders in the developmental welfare field through a South African Developmental Council.¹⁶⁰ Dogged by controversy, it was eventually replaced by the Advisory Board Act.

The proposed advisory board could play a significant role in improving non-profit governance in the social development sector, including that of many national bodies. The board is intended to serve as a consultative forum for the Minister of Social Development to discuss, among other things, the introduction of new policy and policy implementation in the government and NGO environment. This and similar legislation have commendable objectives, but implementation remains a challenge.

3.9

POLICY ON FINANCIAL AWARDS TO SERVICE PROVIDERS

The DSD has published guidelines for NPOs entitled *Policy on Financial Awards to Service Providers*, which:

“is aimed at guiding the country’s response to the financing of service providers in the social development sector, to facilitate transformation and redirection of services and resources, and to ensure effective and efficient services to the poor and vulnerable sectors of society”.¹⁶¹

The *Policy* seeks to:

1. establish between the Department and service providers a funding relationship that renders developmental social welfare services,
2. determine the requirements and mechanisms for making financial awards to such service providers,
3. provide a tool to facilitate the transformation of social welfare service delivery,
4. develop the capacity of emerging and previously disadvantaged organisations that lack resources but understand and could meet the needs of communities,
5. create an enabling environment for new service providers previously excluded from government funding, and
6. provide a basis for the more equitable distribution of resources.¹⁶²

The *Policy* analyses the South African welfare delivery field and emphasises the transformation challenges facing the non-profit sector. It focuses on the responsibilities of NPOs and the requirements they must meet as service providers for government, and particularly looks at NPOs’ own compliance with government’s transformation agenda. The *Policy* favours the representative governance model, requiring service providers to “promote inclusiveness and representivity in the management and organisation of services, including the establishment of management committees that broadly reflect the communities that they serve”.¹⁶³

As stated earlier, the governing board in this model is normally representative of the constituencies or communities that the members themselves represent. The inherent challenge it faces is that of reconciling different interests and keeping various constituencies informed about developments. As Bradshaw et al. put it, “with representative interests and positions, there is a tendency to pursue self-preservation rather than shared interests”.¹⁶⁴

This policy has a direct influence on NPOs that provide services to the DSD, as it prescribes the form of governance they should adopt.

3.10

THE KING II REPORT ON CORPORATE GOVERNANCE IN SOUTH AFRICA¹⁶⁵

The King Committee was set up in 1993 to review corporate governance in South Africa and make recommendations. This resulted in the publication of the *King Report* in 1994, which promoted an integrated approach to good governance in which corporations respond to the interests of a wider range of stakeholders rather than merely serving their interests of their shareholders, and at the same time embracing good financial, social, ethical and environmental practice.¹⁶⁶

An updated report, the *King II Report*, was published in 2002. It made recommendations on good governance principles beyond those contained in the Companies Act. However, it has never been clear if the King II Code of Conduct applies to Section 21 companies and the non-profit sector.¹⁶⁷ Nevertheless, the Code makes a number of recommendations from which the non-profit sector can benefit. The challenge lies in sifting through these to find provisions that have a bearing on specific cases.¹⁶⁸

The *King II Report* embodies a number of features that can be beneficial to the target organisations. These include (but are not limited to)

- the seven characteristics of good corporate governance,¹⁶⁹
- the need for the purpose, core values and the stakeholders to be defined,
- the need for the governing board to give direction and monitor the financial and non-financial aspects of the company,
- developing a code of conduct and a conflict of interest policy,
- providing a brief CV of directors standing for election and re-election at AGMs,
- having proper risk assessment policies and strategies, and
- incorporating an inclusive corporate governance structure that involves other stakeholders beyond members.¹⁷⁰

The target organisations can benefit from adopting a number of practices recommended by the *King II Report*, including the following:

- Ensure that board members act on an informed basis, with due diligence and the best interests of the organisation in mind.
- Ensure that board members ensure compliance with the organisation's legal obligations.
- Conduct regular reviews of the organisation's strategy and plans of action.
- Monitor and manage potential conflict of interests.
- Ensure the integrity of financial reporting and control.
- Monitor the effectiveness of governance practices.
- Devote sufficient time to responsibilities.

Many of the recommendations of the *King II Report* are consistent with the recommendations on non-profit governance best practices and other governance matters covered in this literature review.

3.11

CONCLUSION

Legislation impacting on and regulating the South African non-profit sector is, broadly speaking, enabling and provides opportunities for NPOs who have the governance and administrative capacity to ensure compliance with the legislation.

It is apparent, however, that implementation and policy development require greater commitment from the South African government to ensure that law is interpreted and implemented in a way that reflects intention and meaning of stated legislative objectives. Particular examples of this include the interpretation, application and implementation of and policy development related to the NPO Act, the Income Tax Act, the Skills Development Act, the Advisory Board Act and the Policy on Financial Awards to Service Providers. Attention to how these Acts are interpreted, implemented and supported by government departments and government funding agencies would make a significant difference in the development of an enabling environment for the South African non-profit sector.

Endnotes

- ¹⁴⁵ Irish & Simon (1999).
- ¹⁴⁶ Section 5 of the NPO Act.
- ¹⁴⁷ Section 6 of the NPO Act.
- ¹⁴⁸ Section 3 of the NPO Act.
- ¹⁴⁹ Section 1 of the National Welfare Act.
- ¹⁵⁰ Greater Johannesburg Welfare, Social Service and Development Forum (undated).
- ¹⁵¹ Now referred to as national welfare organisations.
- ¹⁵² Greater Johannesburg Welfare, Social Service and Development Forum (undated, p. 2). An extract from the Forum's submission to the Truth and Reconciliation Commission in 1999 is quoted as follows: "The Fundraising Act was instrumental in creating a lasting divide, of which signs are still evident to the present day, between established welfare organisations on the one hand, and 'alternative' service-providers and explicitly anti-apartheid bodies on the other. Mainstream welfare organisations on the whole failed to come out strongly against the law, and went ahead and registered as fundraising organisations. Other NGOs had to find alternative means of raising funds. Some registered as trusts, Section 21 companies etc. Some managed to raise money secretly via various complicated channels. Yet others found ways to define their activities so as to take advantage of a variety of loopholes which were found in the Fundraising Act. Meanwhile, many organisations which had the benefit of easy registration under the Act, and especially those which also registered as Welfare Organisations under the National Welfare Act and received state subsidy, became stigmatised and were accused of complicity with the government".
- ¹⁵³ A new Companies Act was promulgated in 2008 and will come into effect during 2010 at a date yet to be announced by the President of South Africa. The new Act lays out different conditions for non-profit company registration. A brief guide can be found at www.inyathelo.co.za.
- ¹⁵⁴ Section 2 of the PFMA.
- ¹⁵⁵ Preamble of the PFMA.
- ¹⁵⁶ Section 38(1)(j) of the PFMA.
- ¹⁵⁷ O'Brien et al. (2008, p. 20).
- ¹⁵⁸ Free State Youth Commission (2004).
- ¹⁵⁹ Preamble of the Advisory Board Act.
- ¹⁶⁰ The purpose of the bill is facilitate and consolidating participation of civil society in formulating public policy around transformation in the social sector. The proposed council is to be an important vehicle for consultation. The Bill is an important legislative vehicle for transforming the welfare sector and redressing imbalances of the past. See Advisory Board on Social Development Act, 2001 available on line at <<http://www.info.gov.za/view/DownloadFileAction?id=68129>>.
- ¹⁶¹ *Policy on Financial Awards to Service Providers* – see References section of this Report.
- ¹⁶² *Ibid.*, p. 6.
- ¹⁶³ *Ibid.*, p. 22.
- ¹⁶⁴ Bradshaw et al. (1998, p. 15).
- ¹⁶⁵ *The King Report on Governance for South Africa*, known as the *King III Report*, was published in September 2009 and its accompanying Code will come into effect in March 2010. The literature review was completed before the date of publication of the *King III Report* and is not covered in this Report. For more information on the *King III Report* and its implications for NPOs, see the Inyathelo website (details are in the References section of this Report).
- ¹⁶⁶ PricewaterhouseCoopers and Institute of Directors (2003).
- ¹⁶⁷ The King II Code applies in particular to the following companies: all those with securities listed on Johannesburg Securities Exchange, banks, financial and insurance entities, as defined in various laws regulating the South African financial services sector, and public sector enterprises and agencies that fall under the PFMA and the Local Government Municipal Finance Management Act (No. 56 of 2003), including any department of state or administration in the national, provincial or local sphere of government.
- ¹⁶⁸ The introduction of an audit committee is an example of a governance practice that is not relevant to most NPOs. One of the aims of an audit committee is to include non-executive directors who will safeguard the company's assets, maintain adequate accounting records, and develop and maintain effective internal control systems. This is problematic for a number of reasons. The governing boards of NPOs are by their nature non-executive, committing their time on a voluntary basis. In addition, NPOs already find it hard to recruit voluntary governing board members, and appointing audit committees would add to this burden.
- ¹⁶⁹ The seven characteristics are discipline, transparency, independence, accountability, responsibility, fairness and social responsibility.
- ¹⁷⁰ Other stakeholders include beneficiary communities, employees, donors and relevant communities.

QUANTITATIVE DATA ANALYSIS



The research was conducted using both quantitative and qualitative methods to gather data on a small sample of organisations to

- assess to what extent national bodies and networking organisations are distinctively modelled in terms of organisational and governance formation, and
- determine the impact of governance structure on the ability of both types of organisations to achieve effective governance.

Through the literature survey, it was established that both internationally and locally there are key common features of an organisation’s governance structure, model and practice that can be interrogated to assess the effectiveness of a particular organisation’s governance. Developing an understanding of these governance features, based on international best practice, in respondent organisations enables us to determine the extent to which national bodies and national networking organisations are distinctively modelled in terms of existing governance structures. Both the quantitative and qualitative research methods were therefore designed to gather data on, amongst other things,

1. the legal status and structure of the organisation,
2. board membership and recruitment processes,
3. organisational resourcing,
4. perspectives on board performance, and
5. frequency of planning, meetings and internal communication.

In total, the survey questionnaire¹⁷¹ was sent out to 110 organisations, consisting of 51 national networking organisations and 59 national non-profit bodies. We requested the board chairperson, CEO, a board member or a senior staff member who had been with the organisation for at least three years, to complete the form. Nine completed questionnaires were received from national non-profit bodies and five from national networking organisations.

4.1

THE LEGAL STATUS AND STRUCTURE OF SAMPLE ORGANISATIONS

The most distinctive difference between national bodies and national networking organisations, in terms of legal status and structure, is that national bodies are generally significantly older than national networking organisations. In every other respect, as summarised in the tables in the next two sections, there is little distinction between the profiles of the two types of organisations.

4.1.1 National Non-profit Bodies

Data summarised from the nine responses received is summarised in the table and list below.

Age of Organisation	Head office location	Registered as non-profit	Approved PBO	Entity
+30 years x 6	Main centre – all (Cape Town, Johannesburg or Durban)	All	All	Voluntary Association x 6 Trust x 1 Section 21 x 1

Table 2

4.1.2 National Networking Organisations

- Six of the nine national bodies had been in existence for more than 30 years.
- All of the respondents had their national offices in Gauteng, KwaZulu-Natal or the Western Cape.
- As required in terms of the qualifying criteria, all the national bodies were registered in terms of the NPO Act.
- All of them were also approved PBOs.
- Six were established as voluntary associations,¹⁷² one was established as a non-profit trust and another operated both as a trust and Section 21 company.
- Seven indicated that they operate to some extent in the *social development sector*, and two focused solely on that sector.
- Five of the national bodies are also involved with policy and advocacy work.
- The majority of the national bodies surveyed had a membership base that mostly consisted of organisational members, but some respondents had both individual and organisational members.
- The membership numbers vary significantly from one organisation to the other.

Data from the five responses received is in the following table and list.

- One of the networks has been in existence for more than 30 years, two have been in existence between ten and 19 years, and two between four and nine years.
- Four of the networks had their national offices in Gauteng and the remaining one has its national office in the Western Cape.
- As required in terms of the qualifying criteria, all the networking organisations were registered in terms of the NPO Act.
- All of them were also approved PBOs.
- Two are established as non-profit trusts and two as Section 21 companies. The legal status of the fifth organisation was not reflected on the questionnaire.
- The networks indicated a wide variety of sectors as their areas of operation. Only two indicated advocacy as a focus.

Age of Organisation	Head office location	Registered as non-profit	Approved PBO	Entity
+ 30 years x 1 +10 years x 2 4-9 years x 2	Gauteng x 5 Western Cape x 1	All	All	Trust x 2 Section 21 x 2 No response x 1

Table 3

4.2

BOARD MEMBERSHIP
AND RECRUITMENT
PROCESS

4.2.1 National Non-profit Bodies

The number of board members per organisation varied from a minimum of seven to a maximum of 72. The majority of national bodies had between ten and 20 board members.

The composition of boards in relation to diversity did not raise particular concern with regard to transformation. Although there are isolated examples of lack of demographic diversity, it was noted that overall there is diversity in board membership. However, one notable lack of representation at board level is with regard to people with disabilities. Five of the nine national bodies have no people with disabilities on their boards. The remaining four are organisations that focus on people with disabilities and constituency representation is evident at board level.

The age group of board members varied although it was notable that very few of the national bodies have board members under the age of thirty-five. Four of the national bodies have *no* persons younger than thirty-five on their boards, one had only one member from this age group, and a further two have two members younger than thirty-five. This, in our view, presents a challenge in the nurturing and development of new young leaders to serve on boards because age diversity presents important opportunities for skills transfer between generations.

Most of the national bodies are operating with executive committees as small sub-committees of the full board. Only two of the national bodies indicated that their board members are also serving on corporate boards. We therefore conclude that the transfer of skills from the corporate world to national non-profit bodies is not being practised through board governance.

4.2.2 National Networking
Organisations

Three of the networks indicated that they have a shared governance structure and one made use of a secretariat. Most of the networks have both individual and organisational members. In most cases, the number of organisational members exceeds that of the individual members.

The composition of the boards is relatively diverse. One network consists of mainly black male board members and one white female. In two cases, board members are also serving on corporate boards. However, the data gathered on board composition raises one important indicator, i.e. none of the networks have people with disabilities serving on their boards.

Legal skills are lacking at board level. Two networks indicated that, in addition, financial skills are also lacking. The rating of board performance on various areas of governance raised some concerns in relation to risk management, CEO succession, board evaluation and the setting of policy. A key indicator of governance practice with regard to board membership and recruitment is that none of the networks have written policies on board development, risk management or CEO succession.

4.3

ORGANISATIONAL RESOURCING

4.3.1 National Non-profit Bodies

The national bodies obtain funding from a wide variety of sources. It is evident that government, local corporations, and, to some extent, the National Lotteries Board (NLB) and National Development Agency (NDA) are some of the major supporters of national bodies. Overall, not much support is received from local foundations or through membership fees. For most there is clearly less reliance on local individuals for financial support. Six of the national bodies receive no financial support from individuals.

Most of the sample included in the study indicated that their funding is of a short-term nature, being less than three years. Six of the national bodies indicated that a component of their funding is short-term project funding. Three of those six indicated that the rest of their funding consists of short-term core funding.

The annual budgets of the national bodies are higher than the annual budgets of the national networking organisations. Four indicated that their budgets are over R10 million per annum with one body's budget standing between R5 million and R10 million and three bodies with budgets of between R2 million and R5 million.

The number of full-time staff members employed by the nine national bodies totalled 505. The number of full-time employees per individual organisation ranged from as few as seven to over 200. It is also evident that the organisations with smaller full-time staff components have managed to mobilise large numbers of volunteer supporters. The total number of volunteers currently mobilised by the nine national bodies is 22 848.

4.3.2 National Networking Organisations

Most of the networks receive little or no funding from government and local corporations. More reliance is placed on international donors and income generation (with one receiving a substantial portion from the NLB or NDA). Membership fees contribute to a lesser extent to the income of three of the target sample.

All the networks indicated that their funding is of a short-term nature, being less than three years. Four indicated that funding consists of both short-term project and core funding with one having only short-term project funding. The budgets for all the networks are between R2 million and R5 million.

The number of full-time employees for the five networks totalled 57, which is significantly lower than the 505 full-time employees for the nine national bodies, despite the different size of the networks. The number of employees ranges between nine and 16 per network. The total number of volunteers mobilised by the five networks is 155, which is significantly less than the number mobilised by the nine national bodies.

4.4

PERSPECTIVES ON BOARD PERFORMANCE AND DEVELOPMENT

4.4.1 National Non-profit Bodies

Most of the national bodies indicated that they have budgets for board development. With the exception of two, most boards had the benefit of governance training within the six months prior to the completion of the questionnaire. Despite this, the survey also reflects that boards are having some difficulties dealing with risk management, CEO succession and board evaluation. Written policies on these areas of governance are also largely absent.

It is evident that boards are doing relatively better in the areas of governance and financial oversight. The national bodies have more written policies on staff development compared to board development. Legal and fundraising skills are amongst those missing from the boards of most of the national bodies.

4.4.2 National Networking Organisations

Four of the five national network organisations indicated that they have budgets for board development although only one of the networks indicated that they had received board training within the months prior to completion of the questionnaire. Boards were most commonly rated as having poor to fair performance in fundraising, risk assessment, CEO succession, policy setting and board evaluation, indicating that low performance in these critical areas of governance are a challenge across both types of organisations. However, all of the five networks indicated that they have board development policies in place.

As with the national bodies, legal and fundraising skills were those most commonly identified as absent from the set of available skills on the board.

4.5

PLANNING, MEETINGS AND COMMUNICATION

4.5.1 National Non-profit Bodies

Most of the national bodies indicated that the vision statement of the national body is reviewed on a regular basis and that progress towards the vision is reviewed regularly.

The national bodies indicated that board meetings are held as frequently as required in terms of the founding document. This frequency ranges from two to four meetings a year.

Only one national body, comprising individual members only, indicated that its members meet annually. Three national bodies indicated that meetings of members are held every second year, while two indicated that such meetings are held every fourth year.

4.5.2 National Networking Organisations

Most of the networks indicated that their vision statements are being reviewed on a regular basis and that progress towards the vision is being reviewed regularly.

These networks also indicated that board meetings are held as frequently as required in terms of the founding document, mostly on a quarterly basis.

Network members meet more frequently than members of national bodies. One network holds member meetings 11 times a year, and another every second month. Two of the five respondent networks hold member meetings twice a year, and one network holds a member meeting at least once a year.

Most of the networks make use of regular newsletters, email notification and meetings to update members, with one also making use of cellphone text messages.

The networks indicated that a number of aspects receive high priority within the network, including: having a clearly articulated focus, a commitment to network values, organisational identity, serving network members and regular networks meetings. Most indicated that membership participation in network activities is very good and that network members are clear on the benefits of being part of the network.

Endnotes

¹⁷¹ See Appendix 2 and 3 of this Report.

¹⁷² The voluntary association is also the most popular option for community-based organisations (CBOs).

QUALITATIVE DATA ANALYSIS

5

Both the quantitative and qualitative research methods were designed to gather data on key governance features and factors. These are

1. the legal status and structure of the organisation,
2. board membership and recruitment processes,
3. organisational resourcing,
4. frequency of planning, meetings and internal communication, and
5. overall, perspectives on board performance.

The qualitative methods were used to establish, in detail, the internal trends and external factors that influence governance practice in national non-profit bodies and national networking organisations. Through interviews and focus group discussions, an improved understanding was developed (by corroborating and expanding on the research questions) as to

- how governance is implemented and practised in NPOs, and
- how external factors and internal trends impact on effective governance.

5.1

STRUCTURED INTERVIEWS – ONSITE¹⁷³

The purpose of the structured onsite interviews was to establish the views that CEOs and board members hold on key governance issues. These interviews thus tested the reliability of and gave a more comprehensive perspective on the data collected through the self-administered survey.

Twelve structured onsite interviews¹⁷⁴ were conducted – seven with national non-profit bodies and five with national networking organisations. Of the five recorded national networking organisation interviews, two were conducted with CEOs and three with the chairperson of the governing board.

5.1.1 Legal Status and Structure of the Organisation

National Non-profit Bodies

Operating at a national level, the majority of national bodies have a democratic process of electing board members, meaning that election takes place using a ‘bottom-up’ approach, with board members being broadly representative of the various provinces or regions in which the organisation operates. Ordinarily each province would nominate a provincial representative to serve on the national governing board.

National Networking Organisations

Two of the five networking organisations have a ‘bottom-up’ approach to the democratic election of board members from within the network membership. In this scenario, board members are broadly representative of the various provinces or regions in which the network operates.

However, another two of the five networks do not have democratic processes of electing board members. In both such cases, board members are self-appointed and can decide on the appointment of new board members. Both of these networks pursue relations with members/affiliates in different ways.

The remaining network has a board that consists of a combination of provincial representatives and office-bearers. This network also makes use of a network secretariat which assists the network with, amongst other functions, fundraising.

Impact of Democratic Election processes in Constituting the Board

Respondents who follow a bottom-up election process for board members indicated a range of consequences resulting from this approach. These include the following:

- The election process is, typically, more focused on ensuring broader provincial representation rather than on skills representation.
- Two of the respondents indicated that, given this focus on provincial representation, the pool from which board members are elected is limited. Board members are thus 'recycled' over the years.
- Board members are often elected for their reputation, popularity or esteem within a province or region.
- The provincial representatives usually have a mandate to attend to the issues arising from their provinces or regions.
- It is not uncommon for a completely new board to take office after elections.
- Generally, there is no balance between provincial representation and skills representation on the board.
- Board members lack knowledge of the bigger context within which the organisation operates.
- Boards lack skills to assist with or give guidance on resource mobilisation.
- Boards do not sufficiently support the CEO in implementing the programmes of the organisation.
- Some board members face conflicting interests between the national organisation and their provincial obligations, particularly in relation to funding.

5.1.2 Board Recruitment and Orientation

National Non-profit Bodies

- Because of the nature of their governing structures and their processes for electing board members, national non-profit bodies generally lack active recruitment policies.
- Board members are sometimes co-opted from outside the membership, but only a minority of national non-profit bodies have benefited from this practice.
- Those that co-opted board members said they added value to governance, as they were not preoccupied with the organisation's politics.
- One organisation decided to redress the skills shortage at board level through outsourcing and networking.
- One organisation does not recruit or co-opt board members from outside its membership, as its members could interpret this as disempowering them. The members are proud that the board is made up of people of the same backgrounds as themselves, and believe that the organisation is an important platform for the expression of their interests.
- Respondents indicated that new board members generally undergo an orientation or induction process. For some organisations, orientation and induction happens immediately after elections at the AGM, to coincide with a board meeting. The aim here is to cut costs.
- One organisation conducts an annual orientation session in each province, where board members are helped to understand what is expected of them.
- Some organisations provide orientation manuals to new board members. Orientation covers such basic matters as the organisation's constitution, financial statements and annual report.
- Most of the organisations have provided some training to build the capacity of board members, but, in general, they lack a systematic approach to board development. Such training is an intermittent item on their agendas.

National Networking Organisations

- Not all the national networking organisations recruit board members from outside their membership.
- At least three participating organisations engage in an active process to ensure that members elect skilled board members.
- In one organisation, members nominate candidates, who are asked if they are willing to serve. The CV for each nominee is submitted to the national office and read out in the assembly where voting takes place. The nominees are usually well known in their provinces, but this nomination process ensures that the most suitable people are elected. All board candidates are assessed according to their track record and skills.
- One organisation with self-appointed board members ensures that the board includes individuals on the strength of their expertise. When there is a vacancy on the board, the position is advertised.
- This network has also drawn up a memorandum of understanding with its members, who are now called affiliates. The affiliates are constituted in terms of a separate voluntary association that nominates two people to serve on the board as representatives of the broader membership. They raise issues pertaining to the membership to guide the board.
- One of the participating national networking organisations, which has a bottom-up structure, pays particular attention to the need for a multi-skilled board. This includes legal, financial and other skills that could help the network fulfil its mission.

5.1.3 Organisational Resourcing

National Non-profit Bodies

- The general perception among national non-profit bodies is that organisations are expected to do more work for less money.
- Respondents consistently indicated that funding remains uncertain terrain, and is often limited to short-term programme funding. This means that the organisations cannot focus and plan on longer-term objectives.
- Boards generally play a limited role concerning fundraising. CEOs are expected to do the fundraising, even though some may not be appropriately skilled for this task. One respondent commented that: “The board contributes nothing [in the arena of fundraising]”.
- In most cases fundraising for the national structure and for provincial structures are undertaken separately. One respondent said this meant board members who are representatives of the regions keep funding efforts and information focused on their regional structures rather than on the national structure itself.

Sources of Income

- Four of the respondents indicated that, in recent years, there has been a greater emphasis on diversifying the organisational income. This has meant less reliance on government funding, and more focus on income-generating activities and exploring investment opportunities to supplement the income of the organisation.
- Participating organisations generally support membership organisations with their fundraising efforts by offering training. For example, one organisation has prepared income-generation training manuals for its broader membership, and is in the process of seeking accreditation for its training programmes. Another has developed fundraising workshops for its affiliates.
- Substantial funding from the NLB has made a significant difference for at least two organisations. Others have also received funding from the NLB.
- The funding relationship between government and the organisations interviewed is generally perceived as positive.

- One respondent was of the view that the relationship between government and civil society is not optimal in the South African context. There are still too many restrictive measures on the part of government. This respondent suggested that there should be an interdepartmental arrangement to deal with reporting and requests from non-profit organisations.
- Some respondents raised the following individual concerns about government funding:
 - Criticism of government may result in an adjustment of funding. There was the perception that it was apparent that the more vocal and critical the organisations are at provincial level, the less funding they receive.
 - In some provinces, government is only willing to provide partial funding for the salaries of some staff members and to make small contributions towards administrative expenses. In addition, if government funding is provided for the payment of staff salaries, government expects pro rata time to be used on government work. This arrangement ignores the need for funding for capacity building and for other administrative functions.
 - More restrictive measures have been implemented in the relationship between government and NPOs, and this was of concern to organisations.

National Networking Organisations

- Most respondents said they find it increasingly difficult to secure donor funding. The one exception, who said the network is well funded, believed it could continue its activities for 18 months if funding were suddenly suspended. This respondent remarked that considerable time was invested in creating a sustainable relationship with donors and in creating new partnerships with donors.
- At least three of the national networking organisations interviewed explore and make use of income-generating activities to supplement donor income. This has reduced reliance on donors, although trading income fluctuates. One network generates income through a project management consultancy, selling products and charging membership fees, but the respondent indicated that this could result in 'mission drift'.

- One network organisation has received funding from the NLB to support its activities, including the development of its governing board.
- Two respondents believed their respective networking organisations have been able to attract donations because donors are confident that their boards provide effective governance. This is despite the fact that the boards are not actively involved in fundraising.
- One networking organisation finds it extremely difficult to obtain financial support for its activities and operates mainly without such support.

5.1.4 Frequency of Planning, Meetings and Internal Communication

National Non-profit Bodies

- Generally, board members are involved in strategic planning, but for some national non-profit bodies this has not translated into providing strategic direction to the organisation.
- One respondent commented that board members add little value to the governance of the organisation, except by finding ways to benefit their regions.
- Relations between the board, CEO and staff vary, although the general sense is that governing boards are collectively neglecting their oversight role. This is attributed to board members being preoccupied with provincial concerns.
- In some organisations, there are clearly tensions between CEOs and board members, and in others, the relationship is more positive.
- One respondent stated that new board members might occasionally confuse their roles as managers, within the respective member organisations, with their governance roles as members of the national organisation.
- One respondent stated that some board members resented the growth of the national organisation in comparison to that of the regional/provincial organisation, where they are employed, and this causes tension.
- A smaller management committee to serve as the direct link between the board and the CEO has been established by some of the participating organisations.

National Networking Organisations

- Five respondents indicated that boards give strategic direction to their organisations, although one said that the board has not been active in planning.
- Two respondents emphasised that their boards take into account members' views in their strategic planning.
- One respondent said that the most recent strategic review prompted a number of structural changes, including a review of organisational policies and the introduction of two new subcommittees.
- Two respondents said their organisations have never engaged in a formal external evaluation.
- One organisation conducts an annual internal evaluation and a formal external evaluation every third year.
- Respondents generally took the view that members appreciate the benefits that networking organisations bring them. Having a network structure contributes to forging a collective identity. Members also appreciated regular communication from the network.
- Most respondents said there are no significant tensions between the mandates of the network and its members. One said that this is because the network is clear about its objectives and the service it renders to members.
- One respondent pointed to potential tensions between provincial mandates and those of the broader membership. Board members may see their role on an issue in relation to how it affects their region, rather than its effect on the national organisation. At times, the collective focus is lost in regional concerns.

5.1.5 External Factors Impacting on Governance

National Non-profit Bodies

- During the interviews, more emphasis was placed on the external legal and policy environment. Two of the respondents indicated that the legislative and policy environment is not friendly towards the non-profit sector for the following reasons:
 - The non-profit sector does not necessarily have the capacity to comply with all the legal obligations imposed upon it. The Financial Intelligence Centre Act (FICA),¹⁷⁵ PFMA and skills development legislation were used as examples of this.
 - Different legislation that has been developed over the past few years is still being synchronised.
- One respondent commented that the external environment has been good and bad for the non-profit sector. Another respondent captured the situation as follows: "In terms of governance it's brought policy and procedure to our organisation. In terms of fundraising, it's limited us a little bit. In terms of some of our projects it has restricted us".
- At least three respondents emphasised the positive relationship with government. One respondent expressed the position as follows: "We have a good relationship with the Department of Social Development. I can literally pick up the telephone and phone our contact person if I've got a problem".

National Networking Organisations

- Respondents were moderately critical of the legislative and policy environment of national networking organisations. Generally, respondents recognised that many post-1994 policies were developed to advance development of such organisations.
- One respondent said that the network has to support or criticise certain state policies, and that its reaction depends on how these affect the environment in which it operates. It sometimes crosses swords with government, especially over policy implementation.
- Another said that policy work does not receive its full attention because of lack of funding.

5.1.6 Good Practices and Key Challenges

National Non-profit Bodies

Good Practices

The interviews revealed that national non-profit bodies have adopted a number of good practices. For example:

- One respondent indicated that the organisation is constantly reviewing its constitution to find better ways of dealing with governance requirements.
- One organisation maintains a balance between regional representation and expertise at board level. To promote a better balance, a skills competency list is circulated before the election of board members and CVs are collected before nominations are made.
- In one instance, the chairperson of the national organisation was required to vacate a position in the provincial structure to guard against provincial alliances.

Key Challenges

- A key challenge facing the non-profit sector is the recruitment of skilled staff by government and international NGOs.
- It is now recognised that NPOs must co-opt board members with a variety of skills onto their boards. There is a move toward using retired and older people who can still make a significant impact on boards. An example of this is the Committee of Elders initiated by Botswana's former president, Festus Mogae.
- NPOs would benefit from the contribution of skilled people in all sectors in South Africa. This would have value not just for the present, but also for the future.

National Networking Organisations

Good Practices

Good practices that were revealed during the interview process were the following:

- At least three national networking organisations have appointed subcommittees, which report to the board, to help them with their governance responsibilities. This provides continuity when new board members are appointed, as the membership of the subcommittees does not automatically change after board elections.
- One network has appointed four committees: a management committee, a finance subcommittee, a legal and compliance committee, and an affiliate development committee. These meet every three months immediately after a board meeting, either telephonically or face to face. They report directly to the board.
- One network has limited board members' terms of office to three years.
- In one case, all board members are required to declare any conflicts of interest before the board meets.
- One network has made a clear distinction between board members' national and provincial priorities. To help the chairperson focus on matters of national concern, the chairperson of the national network must relinquish his/her board position in a provincial affiliate.

5.2

STRUCTURED INTERVIEWS – KEY INFORMANTS

The purpose of these interviews was to engage key individuals on issues that emerged from the literature review, the self-administered survey and the structured interviews. The key informants are variously engaged with the non-profit sector through their respective positions, professions and occupations.¹⁷⁶

Interviews were conducted with 13 key informants from the Departments of Health and Social Development, SARS, NLB, private consultancies, the NGO sector and a grant-making institution. The questions put to them differed to some extent, according to their experience and areas of expertise. The interviews conducted with representatives of the NLB and the SARS TEU fall within the broad theme of donors, but are dealt with separately.¹⁷⁷

Since funding and resourcing are central to ensuring effective governance, and effective governance plays a critical role in ensuring that the organisation remains attractive for donor support, these two issues informed the focus of the key informant interview questions. To gather more in-depth information to both expand on and corroborate the data gathered through the survey and structured interviews, these interviews focused primarily on the approach to or understanding of particular questions, as outlined in each of the following sections.

5.2.1 State Agencies

National Lotteries Board (NLB)

The NLB was asked about

1. the nature of grant funding and grant priorities,
2. the supplementing of grant income through business activities,
3. funding for board development,
4. reporting by grant recipients,
5. NLB grant administration, and
6. NLB plans to review its funding systems and practice.

Nature of Grant Funding and Grant Priorities

- The NLB said that it does not decide the nature of grant funding, as this is pre-determined by legislation and policy. The NLB does not make law or issue policy, rather it is responsible for implementing legislation.
- The Minister of Trade and Industry is responsible for setting funding and grant priorities, and for sharing information with other departments. To ensure access to good information about funding organisations, the NLB formerly belonged to the South African Grantmakers Association (SAGA), the only forum in which it formally shared information and which it found to be a useful networking tool. However, SAGA collapsed and the NLB is not currently part of any grantmakers' network.

Business Activities

- The NLB encourages organisations to supplement their income by means of income-generating activities, as this makes them less dependent on lotteries funding.

Funding for Board Development Initiatives

- The NLB's focus is on direct support for projects, rather than providing funding for board development initiatives. Thus, any funding for capacity building provided by the NLB must go to the project for which the funding is granted.
- The NLB does not fund capacity building for board members, unless the board is involved in the project work, which is unlikely.

- Organisations cannot access lotteries funding solely for capacity building – the capacity building component must be attached to a project grant. Only special funding organisations, such as the Sector Education and Training Authorities (SETAs), fund such skills training. The NLB commented: “We think those skills are important but, certainly, the funding for that should come from somewhere else”.
- The NLB took the view that funding for board development poses the risk that board members will be interested in empowering themselves, and that the benefits of funding will not reach project beneficiaries. Lotteries funding targets the beneficiaries of projects.

Progress Reports by Grant Recipients

- The bigger organisations usually submit funding reports on time because funding for the ensuing period is dependent on this.

Grant Administration

- Most funding for charities is granted on an annual basis, but this depends largely on the funding request.

Plans to Review Funding Systems and Practice

- It is the prerogative of the Department of Trade and Industry to decide if a comprehensive impact assessment should be done to evaluate the objectives, implementation, structures and effectiveness of the NLB in terms of the Lotteries Act.
- The NLB has put forward recommendations for a number of legislative amendments over the past four years, including amendments to the funding model and the adjudication process, but progress on these is unclear. The NLB believed that some of the proposed changes would enhance the effectiveness of the organisation.
- It may be necessary to review the way funding is distributed. Some organisations are unsustainable and rely on lotteries funding year after year, and some have not indicated how they propose to become sustainable. A great concern for the NLB is the dependence of some organisations on lotteries funding.

- Reducing the time it takes to assess applications and distribute funds can realistically only be done by increasing staff as the NLB receives between 12 000 and 15 000 applications a year.
- The NLB has conducted an exercise, mainly based on questionnaires, to assess the impact of funding, and another assessment is due shortly. It is important to ensure the optimal use of money.¹⁷⁸
- A shift to a targeted funding model would allow for more focus on where the needs are. For example, if children in the Eastern Cape have special needs, a partnership can be created with the organisations in that area, resulting in greater control of the project. This would avoid a scattered approach where the NLB receives about 14 000 applications a year and considers about 50 a week.
- In the process of allocating grants to NPOs, the NLB carries out due diligence exercises using a standard tool that includes an assessment of record-keeping and financial management in a potential grantee.
- In the past, the NLB had asked large organisations to partner smaller organisations, to help those not fully compliant to access lotteries funding. This attempt to empower smaller organisations did not work as expected, because some of the bigger organisations were reluctant to provide help, believing this could prejudice them.

SARS Tax Exemption Unit (TEU)

The Tax Exemption Unit (TEU) at SARS was interviewed to gain a more in-depth understanding of

- the number of registered PBOs,
- the levels of compliance with conditions for tax exemption among these PBOs, and
- SARS’s stance in relation to key governance issues facing PBOs.¹⁷⁹

Below follows a summary of key points of discussion:

- Organisations unfamiliar with the TEU's compliance requirements can ask for guidance from the TEU. As a result, the TEU has not had to withdraw PBO status in any case because of non-compliance.
- Organisations tend to respect SARS and would rather comply than transgress requirements.
- SARS also places a heavy emphasis on education to help organisations comply with the requirements.
- SARS introduced a new system of partial taxation for PBOs in 2006. Before the 2007 assessment, PBOs did not have to pay tax. As their tax returns only started coming in from 2008, it is difficult to source statistical information on their trading income.
- Partial taxation was introduced to help PBOs become more self-sustaining. Most do not conduct large businesses, according to SARS, although some are involved in property development.
- When asked if it should make the financial information of approved PBOs accessible to the public, SARS responded that it could not do so at this stage because of Section 4 of the Income Tax Act. Generally referred to as the 'secrecy clause', this provision sets limits on how information received by SARS should be treated and relates to trust between SARS and taxpayers.
- When asked if it would provide guidelines on governance matters to PBOs, SARS said it is unlikely to become more deeply involved in PBO governance, as this is beyond its current statutory mandate. However, two recent legislative amendments hinted at the possibility of less fiscal regulation.¹⁸⁰
- SARS indicated that the Income Tax Act does not deal with the issue of how a PBO should be governed.
- SARS has a stricter approach to PBOs that have been approved in terms of Section 18(A) of the Income Tax Act. This is because donors also benefit from deductions from their taxable income.

- Although the Income Tax Act does not focus specifically on the governance requirements of PBOs, donors can ask for information to establish whether these organisations are using donations for their intended purpose.
- SARS is concerned about being seen as the only institution that ensures the proper use of donor funding.

Government Officials¹⁸¹

Officials were asked about:

- what they considered as fundamental to a productive relationship between the state and the target organisations,
- state financial support for non-profit board development,
- levels of support for non-profit lobbying and advocacy work, and
- the punctuality and quality of funding reports.

The Fundamental Components of the State–NPO Relationship

- Both government and NPOs focus on poor and marginalised communities, and the officials identified 'shared focus' as the fundamental requirement of a good relationship between the state and civil society.
- Government officials emphasised that funding is not the only issue in this relationship. It is also important for this relationship to be clearly defined, and for there to exist clarity on what both parties are bringing to it, and how both parties might benefit.
- There is little liaison between government departments and donor institutions on funding priorities, although there has been some collaboration with the NDA and the Department of Provincial and Local Government.
- NPOs should also share and exchange resources.

Support for Board Development

- Grants from the DSD and Department of Health generally do provide for capacity building of governing board members on the basis that stronger boards will have more impact.
- The Western Cape DSD has initiated an institutional capacity building programme for the institutions it supports. It also monitors organisations to provide guidance on governance-related matters.
- In general, the recipients of funding for capacity building have used it effectively.
- The national department also provides seed funding to emerging organisations that do not yet qualify for financing. This is to help them build appropriate infrastructure and systems. In general, the organisations have used this funding well.
- Some organisations do not ask for funding to build the capacity of board members.

Support for Lobbying and Advocacy

- The DSD does provide funding for lobbying and advocacy. An example is funding to raise awareness and promote equal opportunities for people with disabilities and their access to transport. Such grants also may include funding to lobby Parliament.
- Organisations should make a case for departmental funding of such activities in their funding proposals or business plans.
- Both officials interviewed were of the view that government departments should fund the lobbying and advocacy activities of NPOs.

Reporting by Organisations

- The current funding period is limited to a year, meaning that organisations must re-apply annually. Funding is normally renewed if organisations comply with the funding obligations, account for the funding provided in the previous year and deliver the required services.
- Some organisations complained that the reporting requirements at national level are unnecessarily complex and excessive in relation to the funding provided by the DSD.
- Both national and provincial departments are helping organisations that may lack the capacity to comply.

5.2.2 NGO (Non-governmental Organisation) Experts¹⁸²

Individuals were approached to participate in this research based on their expertise and experience in the non-profit sector. Respondents were asked about

- the challenges facing the target organisations,
- the particular challenge of recruiting skilled board members,
- the impact of the external environment on NPO governance practices, particularly with respect of the legislative environment, and
- levels of financial support for lobbying, advocacy and board development.

Challenges Affecting the Target Organisations

- The relationship between government and the non-profit sector is often limited to the former ensuring the latter's adherence to procedural and administrative requirements. It is assumed that if NPOs comply with state requirements then the relationship is sound. This is not a reliable measure, and insufficient emphasis is placed on the human dimension of state/non-profit sector relationships.
- The non-profit sector is struggling to find financial support, making it difficult for it to act as a mouthpiece for its constituency.
- The struggle for financial support also means that NPOs are required to become more professional and compete for tenders.
- In line with global trends, the South African non-profit sector is becoming a delivery mechanism for the state.
- The old mindset among NPOs that the state will provide solutions persists in some quarters.
- The non-profit sector is shrinking and failing to tackle the challenges it faces. Because it is struggling to stay afloat, it is not confronting the threat to its sustainability. The urgency of the threat is not recognised.
- There is insufficient collective action in the sector.
- Regional issues, such as peace and stability, are receiving growing attention.
- Because of its upward focus on donors, the non-profit sector may be losing its connection with its constituency and its soul.

- The sector is becoming an agent of donors, rather than of the people.
- For networks, the key requirement is a good cause that holds them together.
- Fundraising is undertaken to sustain network organisations, but this can be an enabler or an inhibitor. It enables the network to pursue its objectives, but can create competition between the network and its members.
- National networking organisations also may find themselves torn between the demands of those who provide funds (such as the NLB or government departments) and donors. If they only follow donors' demands, they will eventually wither away.
- In the past, those who provided funds gave more general or core support. They tended to be quite generous and supportive towards South African organisations. They now want to know whether and how they are making an impact, and are focusing more on project funding.
- Project funding is often under-budgeted because project proposals are not sufficiently developed. The result is that core money, which still comes in through donors, fees or interest, is used to support projects, and not, more appropriately, vice versa.
- NPOs also need to rethink how they use and develop project proposals and project budgets. Many NPOs are unaware that they can ask for funds to facilitate board development.
- Some international donors are starting to realise that project funding is not working and are giving larger amounts to a few bigger organisations.
- International donors also may be moving to the provision of longer-term finance for more specific kinds of organisations that can have more impact.
- There seems to be a growing focus on organisations' administrative and governance systems, and donors are increasingly focusing on due diligence requirements, a focus that is deepening the divide between smaller CBOs and larger NGOs. A number of international donors feel bound by the Paris Declaration,¹⁸³ which deals with the effectiveness and impact of aid and requires better management and governance of NPOs. Most organisations seem unaware of this document. However,

many international donors require NPOs to comply with the terms of the Declaration, and some organisations could lose funding for not doing so.

- NPOs have not kept pace with changes in funding conditions.
- Most NPOs are under pressure to do more with less money.
- Business activities are essential for promoting sustainability, but should not take over the core function and values of NPOs. Tax legislation affecting them should consider this.
- Social entrepreneurship and philanthropy are starting to emerge in South Africa. Increasingly, those with wealth are concerned with the challenges facing the world and are seeking ways to tackle them.

The Quest for Board Members

- Leadership is a key challenge in the non-profit sector. The leadership crisis in NPOs reflects a broader leadership crisis in the country, which is that there are too few appropriately skilled leaders and not enough support for them.
- NPOs often lack sound recruitment processes.
- Non-profits suffer from a lack of continuity, with a huge turnover of board members from year to year. This results in a loss of institutional memory and failure to transfer knowledge and experience between boards.
- Boards often do not know what kind of person to recruit. It is important to define the type of individual required at the outset and build this into the recruitment process.
- Some organisations are more concerned with having 'big name' leaders on their boards, rather than with whether individuals have the required competencies.
- A range of organisations is pursuing the same prominent people, with insufficient emphasis on whether they add value to governance.
- There is a shortage of skilled individuals who can be recruited to non-profit boards, especially in black communities. This historical challenge cannot be dealt with piecemeal. South Africa has a high unemployment rate and skills being lost through the brain-drain. The skills deficit is more acute in rural areas.

- The value of non-profit boards is increasingly being questioned. Some respondents consider boards 'a necessary evil'.
- There is much emphasis in South Africa on democracy and representation that gives members a say in governance of organisations.
- Board members appointed by membership organisations do not necessarily represent communities.
- National networking organisations should be led by their members.
- A purely representative form of governance carries certain risks, including the following:
 - Vocal and articulate individuals stand a good chance of being elected at 'open' organisational meetings, but are not necessarily equipped for governance.
 - The governance form does not establish whether an individual has important attributes before he or she is elected.
 - The most available person may be elected to the board, while he or she may not be particularly active in the organisation.
- Those elected may be required to represent regional interests, and may operate like shareholders whose main aim is to protect their shares.
- Usually the CEOs appointed to the network governing body are responsible for making key decisions. They become the governors and the players in the organisation.
- An independent governance structure is required for sound governance and to ensure adherence to the values of the organisation.
- Some national networking organisations could operate more effectively if they remain loosely structured.
- Often the members' concerns are not taken into account, because the best-resourced partners are preoccupied with national business or because some members have a stronger voice. If an organisation's goals do not reflect their concerns, members lose their commitment to it.
- In some cases, there is a gap between the national structure and members.
- There are also struggles around management issues, which is sometimes a result of weak management or unorthodox management styles.
- It is problematic when board members are only 'recruited' from member organisations through a perceived democratic process. This works well in bringing members' concerns to the board's attention, but is less effective for governance.
- Representation remains an important consideration for some organisations, as inadequate representation would adversely affect their character.
- There is not enough transfer between the corporate and non-profit worlds. People who work for corporations are not keen to serve on non-profit boards.
- A more focused way of recruiting board members is needed.

The Legislative Environment and Government Policies Since 1994

- The legislative environment does not take into account the importance of informal education.
- Existing laws make it difficult for NPOs to obtain accreditation as training facilitators, facilitate accredited courses aimed at educating communities, or to contribute formally to skills development in the non-profit sector.
- Complex and burdensome statutory requirement as well as frequent amendments to legislation, have affected non-profit governance in general and, by extension, the governance practices of both national non-profit bodies and national networking organisations.
- The legal regime for governance is entirely inadequate.

The Value of Supporting Lobbying and Advocacy Activities and Board Development of Non-profits

- NPOs must be strongly value based, as well as having experience and expertise. Sometimes not all these features are present. If the sector is not value driven, it will become weaker and less able to engage in advocacy.
- Very few local donors fund advocacy. Corporates, in particular, do not appreciate the value of advocacy and lobbying, and their focus is often on public relations and charity. It seems that there is money for welfare and charity, not for changing the world through advocacy.
- Government and politicians need to be more tolerant of advocacy and lobbying.
- In many cases, lobbying and advocacy strategies in NPOs are the same as they were a decade ago. Some national networking organisations have not developed their advocacy component at all.
- Non-profit governance is critical and must receive more attention in the form of training and education. Government is not paying sufficient attention to this.
- Some donors are concerned about board development and contribute financially to it. Others are focusing on it in an unhealthy way, by getting too involved in the internal affairs of organisations, while a third group refuses to fund any development of this kind.
- Organisations, too, are not giving sufficient attention to non-profit governance. Some do not know that budgets and funding proposals should provide for board development.

5.3

FOCUS GROUP MEETINGS

The purpose of the two focus group meetings, held in Cape Town and Johannesburg, was to enable further analysis of the key findings from the literature review, self-administered survey, structured interviews and interviews with key informants. The respondents in the focus group meetings were active in the non-profit sector and/or somehow involved with governance of organisations in the sector.¹⁸⁴

The focus group discussion covered two themes, namely: key external factors and key internal trends with respect to governance structures and practice amongst national bodies and national networking organisations.

With reference to key external factors, respondents were asked to discuss to what extent the key factors (legislative and policy environment, funding environment, increased commercialisation) might impact on the quality of non-profit governance.

Respondents were also asked to discuss how internal trends affect the quality of governance of the target organisations, and to deliberate on what guidelines and alternative organisational structural arrangements would advance good governance practices in the target organisations.

Respondents were asked to deliberate on what guidelines and alternative organisational structural arrangements would advance good governance practices in the target organisations. In this regard, respondents considered what measures already exist or could be introduced to counter the negative impacts and harness the positive impacts of these factors on the quality of non-profit governance.¹⁸⁵

Endnotes

¹⁷³ The initial intention of the onsite interviews was to visit organisations that had not participated in the self-administered survey and to obtain certain organisational documents (including founding documents and organisational policies) from those organisations that were interviewed. This was not possible, for two reasons. Firstly, the low response levels meant we also conducted onsite interviews with some organisations from which we had received completed questionnaires. Secondly, because of the scepticism of some organisations, it was clear that requesting organisational policies may have been construed as a DSD method of conducting organisational inspections. Nonetheless, some of the participating organisations did, of their own accord, provide us with some organisational documents. Mostly CEOs participated in the onsite interviews, although deliberate efforts were made also to interview board members of target organisations.

¹⁷⁴ For the interview questionnaires see Appendix 4 of this Report.

¹⁷⁵ Act No. 38 of 2001.

¹⁷⁶ Not all of the 11 key informants that we identified initially were able to participate in the project. The key informants were generally complimentary of the objectives of the study but some were, due to their own demanding schedules, not able to participate. Some who were unable to participate, provided us with further literature and references, which we found immensely helpful.

¹⁷⁷ See Appendix 4 of this Report for the questionnaire.

¹⁷⁸ "Flowing from its concerns about the lengthy turnaround time between application and payment, the board, after a tender process, engaged an independent consultant to conduct a comprehensive work-study analysis of the business processes involved in the grant-making cycle. After analysing the results, the board re-engineered the grant-making process, including enhancing the software support system. The system was to be fully implemented by August 2008, allowing the board to monitor bottlenecks, individual staff performance, compliance with standards, error rates and other performance-related matters. The system will also enable the board to inform beneficiaries about the exact status of their applications and provide in-depth statistical information for planning." (NLB Annual Report, 2008, p.7.)

¹⁷⁹ See Appendix 5 of this Report for more details.

¹⁸⁰ Firstly, PBOs are no longer required to submit financial statements when they submit tax returns. Secondly, the investment restrictions imposed on PBOs have been removed. They can now decide how to invest their funds. These are two important matters in relation to governance.

¹⁸¹ Names are withheld in line with the confidentiality agreement.

¹⁸² See Appendix 4 of this Report for interview questions, and Appendix 5 for proposals made by these respondents.

¹⁸³ OECD (2005). Paris Declaration on Aid Effectiveness.

¹⁸⁴ See Appendix 1 of this Report for a list of participant names.

¹⁸⁵ An account of these proposals is provided in Appendix 5 of this Report.

INTERPRETATION OF FINDINGS



The central thesis of this research is that South African national bodies and national networking organisations are hindered in their capacity to achieve good governance, as defined and accepted internationally. The main reason for this is that their current governance structures, amongst other key factors, inadequately support effective governance and the implementation of good governance practice.

Research was conducted specifically to assess the extent to which national non-profit bodies and networking organisations are distinctively modelled in terms of organisational and governance formation. Two key assumptions informed the research design. The first assumption is that there are clearly defined and internationally accepted 'best practice standards' with respect to non-profit governance. The second key assumption, based on reports from the DSD,¹⁸⁶ was that South African NPOs are currently experiencing deep challenges in aligning their governance structures with the objective of achieving basic good governance practice.

In this section, we look at the extent to which the research findings support the initial thesis, and the extent to which the two key assumptions have been demonstrated to be valid. Additional interpretation of the findings over and above what we initially set out to investigate are presented.

The interpretation of the findings is arranged in order to answer four key questions, as follows:

1. Are there internationally accepted standards, and clearly defined best practices, for good non-profit governance?
2. What are the main governance models, structures and practices of national non-profit bodies and national networking organisations?
3. What are the governance models, structures and practices of South African national non-profit bodies and national networking organisations, and how do these impact on governance efficacy of these organisations?
4. What are the external factors that affect governance and how do they effect organisations?

6.1

STANDARDS OF BEST PRACTICE IN NON-PROFIT GOVERNANCE

As reflected in the literature review, there are well-established standards internationally for best practice in non-profit governance. Regardless of organisational governance structure, there are core standards against which to measure good governance. Key features or organisational characteristics were identified, through both international and local research, against which it can be determined whether an organisation reflects good or poor governance practices.

There are also internationally accepted core responsibilities of non-profit boards. They are to

1. determine the organisation's mission and purpose,
2. select the executive director,
3. support the executive director and review his or her performance,
4. ensure effective organisational planning,
5. ensure adequate resources,
6. manage resources effectively,
7. determine and monitor the goals of the organisation's programmes and services,
8. enhance the organisation's public image,
9. serve as a court of appeal, and
10. assess its own performance.¹⁸⁷

While there are international standards of best practice, and there are recognised non-profit governance models, best practice does not prescribe which model is appropriate for which kind of organisation. Rather, these standards outline core board responsibilities and key characteristics of good governance, and provide flexibility and choice in how a particular organisation or organisation type implements an effective governance structure.

6.2

GOVERNANCE MODELS, STRUCTURES AND PRACTICES

The literature review draws a distinction between how the two types of target organisations originate, and this differentiation bears directly on governance structure.

With national bodies, the impetus to form a national structure usually starts from the centre and extends towards the periphery, meaning that an organisation seeks through a national structure to extend its reach. Here the goal is usually the extension of service delivery beyond a particular geographic location (in this case, throughout South Africa¹⁸⁸). In this context, the advocacy role of the national body complements its service delivery function. The organisational and governance structures of national non-profit bodies are therefore intended to support a 'centre-to-periphery' service delivery mission.

The development of a national network organisation is founded on a shared desire to advance an issue or purpose through the association of individuals and/or organisation. This, at first, appears to be little different from that of national non-profit bodies where common purpose is also the basis for formation. The main difference, however, can be related to the purpose of the national structure. With network organisations, the purpose evolves from the members. In essence, movement is from the periphery to the centre to achieve a goal that can be better achieved through collective action. This goal is normally advocacy rather than service delivery. With national network organisations, any service delivery function usually compliments its advocacy role, and the structure of the network and its governance is focused on achieving a 'periphery-to-centre' advocacy drive.

6.2.1 Governance Models

Four models of governance were identified in the literature. These models highlight various common approaches to governance in NPOs, and they are used in South Africa for the governance of both national non-profit bodies and national networking organisations.

1. The **policy governance model** proposes a separation of powers and functions between the board and the staff of NPOs.
2. In the **constituent/representative board model**, the board normally acts for the constituencies or communities that the members represent, allowing constituents to take part in governance.
3. The **entrepreneurial board model** has a strong focus on entrepreneurship and market orientation and allows for the organisation's growing competition in the business market, relying more heavily on the sale of goods and services than on donations.
4. The **emergent cellular (networking) model** typically emerges when a number of organisations come together to pursue a shared purpose in a combination of independence and interdependence.

With regard to governance structure, it is reflected that networking organisation governance is structured in three possible ways:

1. In **shared governance networks**, the component organisations make strategic and operational decisions jointly, and they have no formal governance structures.
2. **Lead organisation networks** have one organisation playing the lead role in promoting the network's activities. The lead organisation takes on more responsibility, but also has more decision-making power.
3. **Network administrative organisation networks** are similar to lead organisation networks, but they differ in that their lead organisation is not structured as a separate legal entity established specifically to coordinate and oversee the activities of the network.

6.2.2 Governance Models and Structures of the Target Organisations

When this study began, the researchers and the DSD agreed that it was not possible to make a hard and fast distinction between national non-profit bodies and national networking organisations.

Due to the nature of the primary research question, however, which made the assumption of a distinction, this assumption was tested in the research. It became apparent through the research that there are key similarities and differences between the two types of national organisations, which have an important bearing on matters of governance.

While commenting on the full scope of key differences between the two organisation types is beyond the scope of this project, the differences can be summarised as follows:

1. National bodies have generally been in existence for longer than networking organisations
2. The South African government has historically related differently to the two types of target organisations, providing greater levels of financial support to national non-profit bodies and – during the apartheid era – generally seeing national networking organisations as ‘politically undesirable’ due to the directly political nature of these networks’ focus.
3. There is a distinction between the sources and scale of funding streams to the two different organisation types, and national non-profit bodies are generally better resourced than national networking organisations.
4. Information on national non-profit bodies has generally been more accessible compared to that for national networking organisations.

Most of the respondent organisations use a constituent/representative board model, meaning that board members are elected by the national membership. Of the five networking organisations, three respondents indicated a shared governance structure, while one reflected the formation of a separate legal entity, and one reflected a network secretariat structure.

The governing boards of both kinds of organisations are constituted in a number of ways. Among the nine national bodies, four have boards elected by organisational members, three have boards elected by individual and organisational

members, and one has a board elected by individual members only.¹⁸⁹ Among the five networking organisations, four have boards that are democratically elected by members.

With one exception, then, the participating organisations operate on a bottom-up governance basis, meaning that members elect representatives onto their boards. Board members are mainly elected from a closed membership, limiting the potential candidates. As the target organisations operate at national level, the bottom-up governance structure is ordinarily based on provincial representation and board elections typically take place at AGMs, often leading to the appointment of new board members.

Both types of organisations are based on the fundamental principle that constituencies must be able to make an input. Their work is driven and informed by their members, and the bottom-up governance structure is a way of promoting constituency involvement. If the members have no say in the national structure, then from their standpoint the national structure serves no purpose.

However, the bottom-up governance structure has certain drawbacks, as follows:

- It is not always effective in promoting a common vision, as provincial representatives are voted into their positions with provincial mandates. The weight of these mandates can overwhelm the collective vision.
- Board members must balance their provincial mandates with their collective governance responsibilities. The former is often high on their agenda, as they owe their position on the board to provincial support.
- Because of the way board members are elected, there is less emphasis on ensuring that appropriate skills are represented at board level. The target organisations have introduced a number of practices to offset this, as good governance requires significantly more than constituency input.

Based on both the qualitative and the quantitative data, the researchers propose that, given their more recent formalisation, national networking organisations are more open than national non-profit bodies to exploring different governance structures. Although most have adopted the bottom-up (representative) approach to constituting their boards, others are exploring top-down models to ensure the participation of members.

6.3

GOVERNANCE PRACTICES IN TARGET ORGANISATIONS – INTERNAL FACTORS

6.3.1 General

National Non-profit Bodies

National non-profit bodies ordinarily focus on the social welfare of communities and this binds members together strongly. Despite challenges, many have stood the test of time.

Board members are at times employed by member organisations. This can create tensions and conflicts of interest as follows:

- A CEO may have to relate to the same people as board members and as staff members in the organisation.
- Board meetings become elevated staff meetings, as board members are employees of either the national organisation or its membership/affiliates.

Some NPOs resist change and thus may not have understood or adjusted to external trends. As a result, they may not have responded with the necessary agility to the changed environment.

National Networking Organisations

National networking organisations ordinarily focus on advocacy work, and form networks as a way of strengthening and broadening their impact. They are generally younger than national bodies. Only one network organisation in this study has been in existence for more than 30 years.

The boards of national networking organisations must be flexible and innovative in securing mandates from their members when responding to external trends in the advocacy field. This requires the board to have a combination of relational, leadership and other specialist skills, or to have access to these skills.

Skills representation seems to be taken more seriously by network organisations than by non-profit bodies, in that in a number of national networking organisations, board members also serve on corporate boards.

6.3.2 Impact of Structure on Practice

Fundraising Priorities

As individual board members also have to raise funds for a regional/provincial structure, mobilising resources for the national structure may not be high on their agenda. They are employed at regional/provincial level, and they only serve on the national board in a voluntary capacity. Their governance priorities are therefore influenced by who pays their salaries.

Capacity-building Challenges

The target organisations face a number of obstacles in building the governance capacity of their board members. Firstly, hosting a workshop on board governance means bringing together board members from different provinces, which can be expensive. Shared time is a precious commodity and is normally used for board meetings. Secondly, the training has to be repeated each time a new board is elected. Finally, some funding bodies view board governance as an intangible benefit and will not fund it.

Changing Practices

The standard way of electing board members at AGMs is safe and familiar, as it broadly embodies the principles of democratic representation. This 'comfort zone' factor may prevent board members from reflecting on and improving long-standing governance practices to achieve more effective governance.

6.3.3 Impact of Board Development and Evaluation on Practice

Board Development

While all of the respondents face challenges in ensuring board development, most of the respondent organisations have pursued board development in a sporadic way and without a clear focus. Of the 14 respondent organisations across both types, 11 indicated that they have budget for governance training and board development.

We also found in key informant interviews that a few organisations have made concerted efforts to address board development, including applying for funding for this purpose and incorporating such expenditure in their budgets. This reflects a growing recognition of the importance of formal board development in ensuring effective governance.

Board Evaluation

One of the national networking organisations conducts an internal evaluation every year and a formal external evaluation every third year. This network indicated that, despite the funding constraints in the sector, it could continue operating for a further 18 months if funding dried up. This network has changed its governing structure with the aim of improving governance and its relationship with members/affiliates.

However, overall, the research reflects that board evaluation is not a well-implemented and regular process. Board evaluation will require focused attention as this can help to identify skills and practice gaps, and inform the development of a formal board development programme.

Reflective Learning

One of the major challenges facing the target organisations, especially the national non-profit bodies, is risk of stagnation in governance matters. Some organisations have experimented with new methods and made adjustments, enhancing their understanding and knowledge of governance. Governance should involve continuous experimentation and learning.

In one national networking organisation, reflection prompted a change from a bottom-up governance structure to one that was top-down. This resulted in a greater emphasis on the need for appropriate skills on the board, ensured that the concerns and

voices of members are heard and represented at board level, and promoted a balanced perspective on governance matters. In this case, the person interviewed was clear that the governance of the organisation had improved significantly.

In another national body, reflective learning resulted in changes to the constitution aimed at exploring improvements in governance. In other organisations, it led to the seizing of opportunities (e.g. to diversify income streams).

6.3.4 Impact of Bottom-up Structure on Practice

Balance between Representation and Skills

One of the tensions in the target organisations is balancing the representation of constituencies with appropriate governance skills. Elections based on constituent representation in themselves do not guarantee the required range of skills. Skills representation should be an objective.

With regard to network organisations, advocacy and lobbying are the core objective. Therefore, having activists on the board and as staff members is vital, but this must be complemented by a diverse range of skills required for non-profit governance. Some organisations have consciously chosen to balance the quest for activists with people who have specific technical skills related to governance.

Respondent organisations have explored a number of options to manage this challenge, including the following:

- Additional individuals have been co-opted to the board after board elections and following a skills audit.
- Co-operation with outgoing board members has ensured a smooth transition between elections and the retention of skills.
- A top-down governing structure has been adopted with a self-perpetuating board, while providing for members to organise a separate voluntary association and make inputs to the national organisation. The board can recruit appropriately skilled people while catering for the concerns of members.

Organisational Age

Generally, as reflected in the survey data, national non-profit bodies have been in existence for longer than the national networking organisations. Some non-profit bodies have been in existence for decades. To understand this, it is important to note that the majority of national bodies that participated in this study are traditional welfare organisations. Generally, they were supported by the apartheid government and are still strongly supported by the democratic government through policy and legislative implementation, and access to state funding. They are generally resistant to changing governance practice.

The national networking organisations that participated in this project have been in existence for significantly shorter time than some of the non-profit bodies have. Historical context was not a key focus of the study. Nonetheless, it is proposed at this point that national networking organisations developed more recently due to the lack of social justice and not-for-profit funding during the early stages of democracy¹⁹⁰ (see below for further discussion on this funding dynamic), and that prior to 1994 the environment was not conducive to the development of *national networking organisations*.¹⁹¹

Relationship with Government

The relationship between government and each of the two kinds of target organisations developed differently. This is evident from legislation and policy promulgated prior to South Africa's transition to democracy. For example, two pieces of legislation from 1978 encapsulate the undercurrent of these relationships. The NWA 1978, although in practice promoting the objectives of racial segregation,¹⁹² made provision for grants to be made to any *national council*¹⁹³ if it organises or represents welfare organisations on a national basis, subject to conditions. On the other hand, the Fundraising Act of 1978 was aimed at restricting funding to organisations that directly challenged apartheid, which included pre-1994 advocacy-focused networking bodies.

In other words, the one Act was aimed at giving funding to national bodies and the other Act was aimed at taking funding away from progressive organisations. The historical funding and legislative relationship with government of the two target organisations is therefore significantly different.¹⁹⁴ This may explain why networking organisations, in their current form as formal legal entities, did not come into existence prior to the dawn of democracy.

6.4

GOVERNANCE MODELS, STRUCTURES AND PRACTICE – EXTERNAL FACTORS

The target organisations have not been exempt from global trends affecting the non-profit sector, which have both negative and positive implications for them. These trends include increased pressure to become

- service-delivery agents,
- more corporate in approach and implementation, and
- more professional.

6.4.1 The Legislative and Policy Environment

In contrast with the pre-1994 period, the government is generally supportive of the target organisations¹⁹⁵ and has largely maintained a positive relationship with them.

Despite the noble objectives of certain laws, their implementation has been less effective and, in some cases, has had the opposite result from that intended. One respondent pointed out that it is often at the level of implementation that the organisation crosses swords with government. For example, one objective of the NPO Act is to promote a spirit of cooperation and shared responsibility between government, donors and other interested persons. However, the interviews with government officials made it clear that such co-operation is largely absent.

The DSD's¹⁹⁶ impact assessment of the NPO Act raised the issue of lack of departmental coordination, but the situation does not seem to have improved. The commissioning of this and other studies illustrates government's desire to improve its relationship with the non-profit sector, but the urgent recommendations flowing from such studies should be taken on board by government.

Government has not yet developed a coherent approach to the development of skills of non-profit boards. The government officials interviewed for this study generally recognised the need for such skills development. However, state agencies clearly do not shape and implement their policies and measures in a way that is designed to promote, support and enhance the capacity of NPOs to perform their functions – as envisaged by Section 3 of the NPO Act.¹⁹⁷

The research highlighted three important examples of serious limitations in government support for good governance.

The first example emerges from the DSD's *Policy on Financial Awards to Service Providers*,¹⁹⁸ which addresses the need to transform service delivery¹⁹⁹ organisations and deals extensively with the need to accelerate transformation. The Policy clearly favours a representative governance model, and deals to some extent with the need for skills transfer. The benefits of participatory democracy and legitimacy embodied in the constituent/representative board model should not be underestimated, but the Policy is devoid of clear direction or guidelines on the role of board development. Simply promoting a representative governance model will not enhance the ability of NPOs to perform their functions. Given its importance for the non-profit sector, the Policy should be amended to address board development more assertively.

The second example surfaced during the interview with staff members at the NLB. They made it clear that lotteries funding mainly focuses on projects that are in accord with the Lotteries Act and the relevant regulations. However, they went further to insist that, because of the regulations, organisations cannot obtain lotteries funding for board development. This interpretation²⁰⁰ is not supported by the Lotteries Act when read in conjunction with the NPO Act. If the interpretation of staff at the NLB is considered correct, the relevant regulations issued by the Minister of Trade and Industry are not aligned with the intentions of Section 3 of the NPO Act.

One respondent specifically observed that similar to the *Policy on Financial Awards to Service Providers*, the regulations promulgated under the Lotteries Act also promote a representative governance model.²⁰¹

The third example emerged from interviews with NPOs, where it was stated that at times some government departments have only contributed to a portion of staff salaries and minor administrative expenses. This assertion could not be confirmed or corroborated, but requires further investigation elsewhere as any such approach by government departments would completely fail to take into account the key factors that make for an effective, well-governed NPO.

These three examples illustrate two important factors. Firstly, there has been explicit legislative and policy emphasis on the need for transformation within service delivery organisations. Secondly, there is more focus on directly supporting the programme work of organisations, but no concentrated effort on developing boards.

That said, the above examples are not true for all departments, as some have incorporated capacity development as part of their funding focus for the non-profit sector. For example, the NDA launched a R25,7 million capacity-building programme in 2006/07, and the Western Cape DSD has incorporated an *Institutional Capacity-Building Programme* as one of its funding programmes.

Indeed, the commissioning of this research study by the DSD, and other similar studies, are further examples of intentions on the part of government to build the capacity of non-profit boards.

6.4.2 The Funding Environment

Two key sources of NPO funding in the South African context are government and the private sector. Most of the national non-profit bodies that participated in this study have long-standing relationships with the DSD. State funding is provided for annually, but renewing it is largely a formality. This has allowed some organisations to carry out longer-term planning, even though their funding is technically short-term. By contrast, national networking organisations essentially engage in advocacy on issues of social change. Such efforts are often directed at government and the private sector, meaning that networking organisations are unlikely to mobilise support from those quarters. The survey data confirmed this difference.²⁰²

Government and the private sector are more likely to support service-delivery activities of national non-profit bodies than the advocacy activities of national networking organisations. The two forms of target organisations therefore generally have different sources of support, and national networking organisations have generally not been supported by government and private corporations in South Africa.

In 1998, the Center for Civil Society at the Johns Hopkins University in the USA found that 42 per cent of non-profit sector revenue in South Africa comes from government, 33 per cent is generated from private fees, dues and investments, and the remaining 25 per cent is received from private philanthropy.²⁰³ These findings corroborate the survey data from this study.

National Non-profit Bodies

The research shows that national non-profit bodies are experiencing the following pressures from the various types of donors:

1. There is increased pressure on non-profit bodies to become service-delivery agents on behalf of government and to focus more on tangible, measurable outcomes.
2. A second pressure is to follow the constituent/representative board model favoured by government, by emphasising the involvement of beneficiaries in the governing structures of organisations as part of the transformation agenda.

These pressures have a number of implications for national non-profit bodies:

1. Those that are not focused on service delivery may find it more difficult to access government funding. Service delivery is, however, a key component of the work of national non-profit bodies.
2. A representative governance model has two important dimensions, both of which need financial support. It implies a need to build the governance capacity of beneficiaries, and to carry out the mandate of those being represented. In some cases, this means advocacy.
3. The representative governance model involves multi-interests, which are potentially in conflict.²⁰⁴

With regard to corporate funding sources, there is increased pressure to translate corporate funding into 'value for money' by focusing on directly measurable and tangible outcomes, and to follow for-profit business practice by adopting corporate governance standards and becoming financially self-reliant. This can have positive spin-offs, where better corporate governance can enhance non-profit governance,²⁰⁵ and key informants confirmed that organisations are increasingly focusing more on their administrative and governance systems. In addition, business strategies can potentially make NPOs more financially sustainable. However, there also are adverse implications for national non-profit bodies:

- The adoption of commercial activities can drive a wedge between organisations and their beneficiaries, as most NPOs provide services to the poor and marginalised who cannot afford to pay for them, as demanded by commercial practice.
- There is often an assumption from corporate funding organisations that non-profit boards have business skills. This assumption is flawed, as there has been no significant transfer of skills from the business world to the non-profit sector. In the survey, few target organisations indicated that their board members also serve on corporate boards.
- There is a mismatch between the pressures exerted by government and the private sector. Government is calling for community representation, while the private sector wants organisations to follow corporate principles. To satisfy these different demands, different skills, attributes and interventions are required.

National Networking Organisations

The major pressure on national networking organisations is their difficulty in sourcing funds. As reflected in the survey, their main sources of funding are international donors and income-generating activities, and exclude government and local corporations. Very few organisations receive support from official development agencies, and only one of the participating organisations drew most of its support from the NLB, in line with its strong welfare focus. The survey also showed that membership fees provide a minimal portion of their income.

Another key pressure for national networking organisations is the need to subscribe to the agendas of international donors, the main source of income for some networks. At times, these agendas may conflict with the needs, aspirations and objectives of network members.²⁰⁶

Effective advocacy requires flexibility, so that organisations can respond to emerging issues and keep pace with a rapidly changing context,²⁰⁷ and advocacy-focused responses should be developed by members, not dictated by donors. Subscribing to donor agendas also threatens organic network development, which is vital for the survival of national networking organisations.²⁰⁸

It is important for national networking organisations to comply with the Paris Declaration on Aid Effectiveness,²⁰⁹ the full implications of which have not been grasped by donors, governments or the non-profit sector. The Declaration urges donors to base their overall country support strategies, policy dialogues and development cooperation programmes on partners' national development strategies, and to conduct periodic reviews of progress in implementing these strategies. This assumes that the non-profit sector, including national networking organisations, was involved in drawing up national development strategies²¹⁰ and that those strategies are being implemented effectively. There is an important distinction between agents of service delivery and advocates for change, and the Paris Declaration appears, in theory, to favour the former.

It is vital for network organisations to deliver services in order to access government funding and become more sustainable. In all likelihood, this donor-driven approach will divert attention away from an organisation's original mission as it increasingly shapes its programme work around its donors' needs.

Lastly, network organisations should obtain support from private individuals for advocacy-related activities, adopt an entrepreneurial governance model and carry on income-generating activities to become more self-sustaining. Such organisational activities and approach can divert attention away from an organisation's mission, so this should be done with care.

6.5

COMMENTS

There are a range of differences between the two types of organisations, which affect governance structure, and practice. Key factors include, but are not limited to, organisational purpose and organisational age. In addition, external factors (e.g. relationship with government, impact of policy, pressure from donor driven-agendas and the accessibility, or lack thereof, of a range of funding sources) have influenced these differences.

The combination of these internal and external factors impacting on governance efficacy present significant challenges to South African NPOs, particularly to national non-profit bodies and national networking organisations. Three key factors are critical for effective governance:

1. NPOs themselves need to recognise the central role of governance in ensuring the long-term sustainability of non-profit initiatives, and board members need development training in this respect.
2. South African NPOs, regardless of whether they are national bodies, national networking organisations or other kinds of non-profits, need to be willing to do the work required not only to improve their own governance, but to promote the importance of effective governance and the need for donor support for board development and evaluation.
3. The DSD needs to initiate a coherent drive across government departments and organs of state to ensure that non-profit support is addressed at all levels and in all possible ways.

The recommendations in the next section of this Report are based on the interpretation of the findings, as outlined in this section, and draw on the proposals made by key informants and focus group respondents.

Endnotes

¹⁸⁶ As per Project Charter.

¹⁸⁷ Ingram (1996, p. 81).

¹⁸⁸ This is evident from the fact that most national bodies that participated have provincial members/affiliates that mirror the name of the national bodies.

¹⁸⁹ One of the nine respondents did not provide this information.

¹⁹⁰ Julie (2009, p. 8).

¹⁹¹ Networks were clearly in existence prior to 1994, but not in the form of legal entities as envisaged in this study.

¹⁹² Greater Johannesburg Welfare, Social Service and Development Forum (undated).

¹⁹³ These would be national welfare organisations in today's context.

¹⁹⁴ An extract from the Greater Johannesburg Welfare, Social Service and Development Forum's submission to the Truth and Reconciliation Commission in 1999 states: "The Fundraising Act was instrumental in creating a lasting divide, of which signs are still evident to the present day, between established welfare organisations on the one hand, and 'alternative' service-providers and explicitly anti-apartheid bodies on the other. Mainstream welfare organisations on the whole failed to come out strongly against the law, and went ahead and registered as fundraising organisations. Other NGOs had to find alternative means of raising funds. Some registered as trusts, Section 21 companies etc. Some managed to raise money secretly and via various complicated channels. Yet others found ways to define their activities so as to take advantage of a variety of loopholes which were found in the Fundraising Act. Meanwhile, many organisations which had the benefit of easy registration under the Act, and especially those which also registered as Welfare Organisations under the National Welfare Act and received state subsidy, became stigmatised and were accused of complicity with the government" (undated, p.2).

¹⁹⁵ Draconian laws promulgated during the apartheid years were repealed and new laws, including the NDA Act, the Lotteries Act and the NPO Act, have since been enacted with the aim of supporting the non-profit sector.

¹⁹⁶ Department of Social Development (DSD) (2005, p. 116).

¹⁹⁷ Entitled '*State's responsibility to nonprofit organisations*', this Section states: "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 nonprofit organisations to perform their functions".

¹⁹⁸ Department of Social Development (DSD). *Policy on Financial Awards to Service Providers* – see References section of this Report.

¹⁹⁹ This terminology may be interpreted to exclude the advocacy work of national networking organisations.

²⁰⁰ In an interview, a NLB staff member stated: "We think those [governance] skills are important, but certainly the funding for that should come from somewhere else".

²⁰¹ See National Lotteries Distribution Trust Fund, Charities Sector Criteria for Application (2007, p.1) wherein it is stated that one of the criteria for lotteries funding is that "organisations must demonstrate beneficiary community representation in their staff/management and board/committees".

²⁰² See Appendix 3 and 4 of this Report.

²⁰³ Cited in O'Brien et al. (2008, p. 20).

²⁰⁴ As Bradshaw et al. (1998, p. 15) observe: "Conflict, which is a natural and common feature of a multi-interest group, does not always get resolved and can damage board relationships".

²⁰⁵ This is supported by Schmidt (2008): "the tenets of business thinking – proper governance, matching operating strategies to resources, accurate reporting – are important for optimal functioning of non-profits, whether they pursue a commercial opportunity or not".

²⁰⁶ For example, see Adams et al. (2006, pp. 9–10): "There is a difference between those official agencies who see support to civil society as a means to the end of development interventions, and those who see it as an end in itself. The proponents of the latter view tend to argue that such support will reinforce democracy and social and political pluralism, and that the existence of a large number of CSOs will, by default, help counter dictatorial forms of political structure and contribute to the strengthening of social capital etc ... On the other hand, for those who regard support for civil society as a means to achieving a specific result (for example an explicit poverty reduction focus), the outcomes are often very different ... Thus, whilst official agencies look for modern managerial structures by which to deliver services (i.e. through more formal NGOs), social movements are less suited to this contract-based way of working, often tending to be more responsive to changing environments and the needs of those whom they represent."

²⁰⁷ Bradshaw et al. (1998, p. 18).

²⁰⁸ For example, was the decision to constitute a network as a formal legal entity motivated by the membership or donors? Due to the limits of this particular research project, these questions were not pursued for this study.

²⁰⁹ The Paris Declaration (OECD, 2005) is endorsed by several countries. It is aimed at improving interaction between donors and developing countries to increase the effectiveness of aid flowing to such countries. Key principles contained in the declaration cover, *inter alia*; scaling up for more effective aid; adapting and applying to differing country situations; specifying indicators, timetable and targets, and monitoring and evaluation.

²¹⁰ Adams et al. (2006, p. 23).



RECOMMENDATIONS

The purpose of the study was to assess the extent to which national bodies and national networking organisations are distinctively structured in terms of organisational and governance structure, and to recommend interventions and alternative organisational arrangements that would promote best practice in non-profit governance. The research has provided key data on the organisational and governance models of the target organisations. Despite the exploratory nature of the research, the data collected has confirmed distinctive characteristics of, challenges to, and issues for the two types of target organisations.

7.1

DEVELOP A COHERENT GOVERNMENT APPROACH TO CAPACITY BUILDING

The research has focused on both the external environment within which the target organisations operate as well as internal governance practices. The recommendations therefore focus on improvements in the external environment as well as alternative organisational governance arrangements.

In addition to general guidelines for good governance, four key recommendations are described in this section. They are to

1. develop a coherent approach to capacity building,
2. develop a national resource facility on non-profit governance,
3. develop a proactive culture of learning in target organisations, and
4. encourage service on non-profit boards and build capacity at board level.

The research highlights the incoherence of government's response to capacity building in NPOs. The NPO Act spells out the state's responsibility to NPOs, including the target organisations, in the following terms:

"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 nonprofit organisations to perform their functions".²¹¹

Not all organs of state have complied with this responsibility. As the NPO Act falls within the mandate of the DSD, the DSD should provide the lead in developing a coherent approach to promoting, supporting and enhancing the capacity of NPOs to perform their functions. The Department therefore needs adequately to resource the NPO Directorate to promote, support and enhance the capacity of NPOs in this regard. Specific measures should include those presented below.

7.1.1 Revise Policies and Measures of the DSD

The Department's *Policy on Financial Awards to Service Providers*²¹² falls short of the requirements of the NPO Act, in that it does not promote, support and enhance the capacity of NPOs to perform their functions. The Policy seeks to facilitate the transformation of social welfare service delivery. This is important, but the Policy should place greater emphasis on capacity building in the non-profit sector, including the target organisations. Capacity building is central to achieving transformation goals and ensuring constituency representation in the governance structures of national non-profit bodies.

All measures and policies of the national and provincial DSDs should be revised to ensure that they clearly emphasise their obligation to promote, support and enhance the capacity of NPOs to perform their functions.

7.1.2 Raise Awareness of the State's Responsibility to NPOs

Government's approach to the non-profit sector, including the target organisations, should be guided by the objectives of the NPO Act. Not all organs of state realise the importance of governing boards, and raising their awareness would be a first step towards generating an appreciation of the importance of non-profit governance. It is clear that not all organs of the state are aware of the responsibilities conferred by Section 3 of the NPO Act.

A number of state organs fund NPOs and should be made aware of their responsibilities under the Act. There should also be a concerted drive to emphasise the role of governing boards, and the importance of good governance, in NPOs.

7.1.3 Revise Laws, Policies and Measures of Organs of the State

The DSD can play a key role in assisting other organs of the state to revise their policies and measures in line with the NPO Act to ensure that they unequivocally emphasise the obligation to promote, support and enhance the capacity of NPOs to function. All organs of the state that fund the non-profit sector need to revise their policies and measures to ensure that they discharge their responsibility for strengthening the capacity of NPOs to perform their functions. One example is the funding of good causes in terms of the Lotteries Act. The NLB has distributed more than R5 billion to NPOs on the assumption that other donors are funding improvements in their governance capacity. This clearly falls short of the state's responsibility under Section 3 of the NPO Act. If the Act and regulations do not provide for support for capacity building of non-profit boards, this legislation should be amended.

7.1.4 Promote Co-operation and Shared Responsibility between Organs of the State and NPOs

One of the functions of the NPO Directorate under the Act is to liaise with other organs of the state and interested parties to promote a spirit of cooperation and shared responsibility in government. The DSD could initiate and drive a coordinated response by organs of the state to the capacity-building needs of the non-profit sector, including the target organisations. Although some organs of the state have developed innovative ways of supporting, promoting and enhancing the capacity of NPOs to perform their functions, there is no evidence that departments are sharing information with each other on best practice with regard to capacity building for non-profit boards. Closer collaboration between different organs of the state and the non-profit sector is recommended, to ensure coordinated efforts to build the capacity of NPOs.

7.2

DEVELOP A NATIONAL RESOURCE FACILITY ON NON-PROFIT GOVERNANCE

The researchers were not able to identify any widely used resource facility that provides advice and assistance on non-profit governance. This research project was commissioned after the NPO Directorate received requests from target organisations for advice on governance. A national resource²¹³ is needed to deal with the major governance challenges facing NPOs, including the target organisations.

The researchers support the following three possible strategies, not mutually exclusive, which have emerged from the focus group discussions.

7.2.1 Strategy 1: Appoint a Governance Advisory Committee

The DSD could appoint a committee of experts, practitioners and technical advisers to respond to and publish requests for advice on non-profit governance. The committee would not have to be centrally located and should be able to respond to individual governance queries from the non-profit sector and publish regular comments on non-profit governance. It could also serve as a resource for other organs of the state. There is already provision for a similar committee under the NPO Act. Section 10 gives the Minister of Social Development the discretion to appoint an advisory or technical committee to achieve the objects of the Act.

A potential limitation is that a committee of this kind, which would be government funded, might not be seen as independent.

7.2.2 Strategy 2: Establish a Non-profit Governance Institution

An institution could be set up to focus on conducting research, developing resources and providing advice and assistance to NPOs on non-profit governance. It would operate independently from government, but it could be supported by government, the private sector and civil society. However, it would have to ensure its own sustainability once it was established. An example from elsewhere of such an institution is BoardSource in the US.

7.2.3 Strategy 3: Develop Unit Standards for Board Development

SAQA should develop and recognise unit standards as a starting point for the introduction of a proper non-profit board development strategy in South Africa. The current skills development framework is largely inappropriate and does not address board development needs.

7.3

DEVELOP A PROACTIVE CULTURE OF LEARNING IN TARGET ORGANISATIONS

Governance is an evolutionary process that requires engagement with the external environment, as well as ensuring efficient internal practices. This requires boards to be dedicated to the ongoing improvement of governance practices. Reflection, learning and evaluation must be planned and embedded in the organisational ethos, and boards should provide the lead in this regard.

7.3.1 Encourage Organisational Reflection and Learning

Each of the target organisations is unique, and simply copying the practices of other organisations is no guarantee of success. With this in mind, the following recommendations are made:

- Boards should commit themselves to regular reflection on how the external environment is affecting the mission and activities of the organisation, to develop a suitable strategic response. This may require different ways of thinking about the composition of the board and its value to the organisation. Given the complexity of the external environment, it is important to have diverse skills and experience on the board.
- Taking into account the unique character of the organisation, a non-profit board should commit itself to regular reflection on what has and has not worked. This can be done informally by briefly considering such questions at each board meeting, or more formally by setting special meeting times for this purpose.

7.3.2 Develop a Commitment to Regular Evaluation of Board Effectiveness

It is recommended that boards hold regular internal and external board evaluation sessions. Internal evaluations should consider the observations of members and constituencies. Given their cost, external evaluations can be less frequent. Evaluation sessions should consider the board's performance in the areas of

- providing leadership,
- providing governance oversight,
- providing financial oversight,
- ensuring legal compliance,
- providing strategic direction,
- setting policy,
- managing organisational risks,
- monitoring programmes,
- self evaluation,
- reflection and learning,
- mobilising resources,
- board and CEO relations, and
- planning CEO succession.

Boards should commit themselves to a constructive engagement with the outcomes of evaluation sessions in order to improve governance practices.

7.3.3 Develop a Commitment to Implementing Changes in Governance Practices

After due reflection and/or evaluation, boards should identify what changes are required so that the organisation can improve on past performance. Boards must be willing to implement the changes that have been identified and this requires the commitment of time and resources that must be included in organisational planning.

7.4

ENCOURAGE SERVICE ON NON-PROFIT BOARDS AND BUILD CAPACITY AT BOARD LEVEL

The research found that the target organisations have mainly relied on their own members to serve on governing boards, which has meant that board membership has been less based on required skills and more based on available skills. This has limited the extent to which external skills have been accessed in support of organisational governance.

The availability of suitable candidates for non-profit boards is crucial. Government, the private sector and the target organisations should play a role in this. These stakeholders should actively encourage individuals to volunteer their time to serve on boards. A public database of organisations in need of board members (listing the ideal values and skills) can be developed. Employees and directors of corporate institutions can be encouraged to register their intention to volunteer their skills and time by serving on non-profit boards.

Boards must actively develop and implement strategies for building the capacity of board members through training and development. These should include

- conducting a comprehensive needs assessment,
- developing a commitment to building the capacity of board members,
- scheduling regular capacity-building sessions, and
- ensuring adequate resources are available to implement the capacity-building strategy, by including budgets for board development in funding applications.

7.5

GENERAL GOVERNANCE GUIDELINES FOR TARGET ORGANISATIONS

As stated earlier, the constituency representation model has a number of pitfalls, but it also has value for NPOs. The recommendations take this into account by not advocating one model over another, but by seeking to ensure that the weaknesses of the constituency representation model are addressed.

7.5.1 Cultivate a Shared Vision for the National Structure

The target organisations should develop and cultivate a shared vision for their national structure which transcends the various regional concerns. Having a clearly defined, living vision that is embraced by the whole organisation can make the difference between success and failure. The effectiveness of a target organisation depends on how well it can mobilise in support of a common vision.

A national structure's common vision should

- be developed with the participation of members and constituencies,
- be embraced and understood by all members and constituencies,
- unify and transcend the diverse concerns of members and constituencies,
- carve out a clear focus for the national structure,
- promote a collective identity for the target organisation,
- complement the work of the members and constituencies, and
- inform the collective values of the organisation.

7.5.2 Create a Balance between Representation and Skills

As legal entities, organisations must adopt and maintain effective governance structures. Since the representation and participation of constituencies and members in the organisation's activities is essential, target organisations should strike a suitable balance between ensuring member and constituency involvement and including individuals with strong governance skills on the board.

This balance can be created in a number of ways, including the following:

- **Capitalise on internal capacity:** Organisations should ensure that appropriately skilled individuals are drawn from the membership and constituencies to serve on the board.²¹⁴ The target organisations often have large numbers of individual and organisational members. In their quest for skilled board members, they can draw on this resource. Each organisation should compile a list of skills,²¹⁵ knowledge and experience required for an effective board. This could be distributed among members before elections, with the request that such competencies be considered when candidates are nominated.
- **Co-option:** Organisations could also compile a list of skills, knowledge and experience needed by a newly appointed board, so that further board members can be co-opted to meet any shortfalls. Skilled individuals could be drawn from the organisation's membership or constituencies, or from outside the organisation.
- **Using committees and service providers:** Certain governance functions can be delegated to smaller committees, if appropriately skilled individuals are available. Alternatively, they can be delegated to service providers, if budget allows for this. However, it should be understood that the board cannot shift its fiduciary responsibility to a committee or service provider, and remains accountable for the organisation. Whilst the execution of board tasks can be delegated, oversight responsibility remains with the board.
- **Transferring skills, knowledge and experience:** Organisations should make a coordinated effort to ensure that board members who have skills, knowledge and experience in non-profit governance transfer them to other members who can benefit from this transfer of skills, knowledge and experience.

- **Centralised governance structure:** An organisation can change from a bottom-up governing structure to one that is centralised and top down, while having independent individuals with diverse governing skills on their boards. This can be complemented by ensuring that a percentage of board members represents members and constituencies. The board should not operate outside the mandate of the membership.

7.5.3 Enhance Board Continuity

- **Staggered rotation:** The target organisations should avoid the wholesale replacement of boards at AGMs. A staggered rotation of board members (where, for example, only half the members are replaced at elections) allows for some continuity, and new board members then have the benefit of working with existing members.
- **Smaller governance committees:** The appointment of smaller governance committees can make a significant contribution to board continuity. Committees can track priority areas and would not automatically be affected by the rotation of board members.

7.5.4 Adopt and Implement Effective Recruitment and Orientation Strategies

- **Recruitment:** The target organisations must adopt and implement an effective recruitment strategy for board members, which should be tailored for recruitment both from within and outside the organisation. The recruitment strategy should be centred on the skills, knowledge and experience required, the attributes an individual should possess to serve on the board, and the role and responsibilities of new board members.
- **Orientation:** The target organisations must adopt and implement a strategy to orientate new board members in respect of the organisation and their governance responsibilities. Orientation takes time and must be focused to be effective.
- **Clarifying roles of the national structure versus members:** The target organisations must focus on clarifying the role of the national structure, as distinct from that of provincial or regional structures.

7.5.5 Provide for Meaningful Membership/Constituent Engagement

The target organisations should develop policies and procedures that will allow members and constituencies to engage meaningfully with and through the governing board. This can be achieved in a number of ways.

- **Board representation:** Taking account of earlier recommendations, members and constituencies can serve on the board of an organisation. This structure in itself does not guarantee meaningful engagement. Representative board members must serve as an active communication channel between the board and the members and constituencies.
- **Membership committee:** The board can delegate the task of engaging members and constituencies to a dedicated committee. In this context, it is important for board members to serve on the committee, which will facilitate meaningful engagement if it enables communication between the board and the membership and constituencies.
- **Communication strategy:** An effective communication strategy should clarify the board's governance responsibilities and identify opportunities for meaningful participation of members and constituencies. The strategy should clarify the vision, mission, values and role of the national structure, and define its mandate.

7.5.6 Avoid Conflicting Interests

- **Avoid placing staff of branches on national boards:** Boards should avoid a situation where staff members of branches are elected or appointed to serve on the board of the national structure. This will create a conflict of interest and detract from accountability, as these members must now act in the interests of the broader organisation while being conscious of who pays their salaries.
- **Resign posts at regional level:** Target organisations should require elected board members to resign from the governing positions in member organisations or provincial structures, if their dual capacities present potential conflicts of interest.

- **Develop a conflict of interest policy:** Target organisations should develop conflict of interest policies and outline the procedure to be followed if conflicts of interest arise.

7.5.7 Create a Constructive Relationship between the Board and the CEO

A constructive relationship between the board and the CEO is critical for the success of the target organisations, and boards must cultivate this. The following measures are recommended:

- **Provide proper support:** Boards should give proper support to the CEO to enable him or her to direct the day-to-day affairs of the organisation.
- **Give direction:** As stated earlier, boards should cultivate a shared vision for the national structure, which will promote a collective identity, and communicate it to the CEO. He or she will then execute a collective mandate.
- **Clarify expectations:** Boards should communicate their collective expectations to the CEO. The CEO should also know what is expected of him or her, the extent of his or her authority and what support he or she will get.
- **CEO evaluation:** Boards should regularly evaluate the performance of the CEO with reference to goals set jointly by the board and the CEO, and provide feedback on his or her performance. The CEO's performance should not be evaluated by an individual board member, but by three or more members or a committee.

Endnotes

²¹¹ Section 3 of the NPO Act.

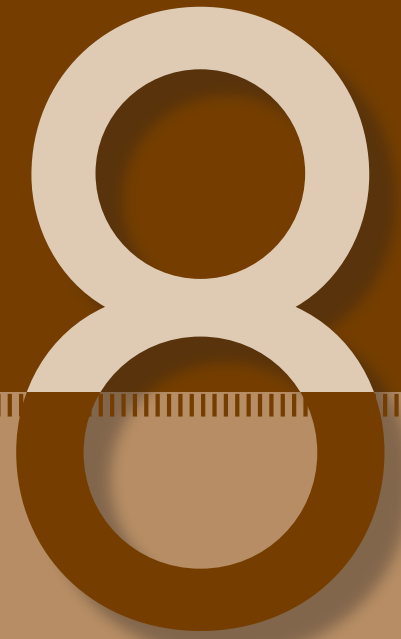
²¹² See References section of this Report.

²¹³ This would be a facility to promote legal compliance, accountability, non-profit governance and policy development, and which could be widely accessed by non-profits all over the country.

²¹⁴ At least one organisation from the sample has already adopted this approach.

²¹⁵ See Inyathelo's *The Board Walk: Good Governance Guides* – a series of booklets that outline important factors and practices in ensuring good governance in non-profit organisations – for a way to go about identifying skills gaps (Wyngaard 2009a, 2009b; Hendricks 2009).

FINAL REMARKS



This research was conducted specifically to assess the extent to which national non-profit bodies and networking organisations are distinctively modelled in terms of organisational and governance formations.

8.1

LIMITATIONS OF THE STUDY

The limitations of this study can be summarised as follows:

- The study was conducted over a short period. A more representative sampling would require more time and financial support.
- A number of issues were identified during the research that went beyond the scope of this study. Issues for further research are listed in the next subsection.
- The Department funded the project, which is the first of its kind in South Africa. It appears that the Department's initiation of this research provoked scepticism and a lack of enthusiasm among some target organisations, who considered the project to be an auditing or monitoring exercise despite attempts by the researchers to clarify the purpose of the research.
- Identifying national networking organisations willing to take part in the study proved a challenge. One reason may be that those organisations that did not attend the reference group meetings scheduled by the Department, did not have the benefit of being introduced to the project.
- Some government departments were slow in responding to requests for interviews and some were unclear about which official should participate. Although it was made clear in the approach to other government departments that the research was commissioned by the DSD, and that therefore a level of cooperation was expected, participation was not always forthcoming and the findings of the study may therefore fall short of a more inclusive perspective.

The two key assumptions that informed the research design are that

1. there are clearly defined and internationally accepted best practice standards with respect to non-profit governance, and
2. South African national non-profit bodies and national networking organisations are currently experiencing deep challenges in aligning their governance structures with the objective of achieving good governance practice.

With regard to the first assumption, the conclusion of this research is that there are clearly defined and internationally accepted best practice standards with respect to non-profit governance. It is reasonable and appropriate, based on the scope of the international literature review, to understand these best practice standards to be broadly applicable in the South African context and therefore to apply to national non-profit bodies and national networking organisations.

The research also found the second assumption to be true. The challenges facing the majority of the 14 survey respondents arise particularly from their adoption of the constituent/representative model and a preference for a bottom-up approach to constituting board membership. This structure means that board members are drawn from the organisational membership, which causes a range of possible conflicts of interests, particularly around fundraising and divided loyalties.

The DSD has already taken some initiative to concretely address the impact of the current legislative and policy environment on NPOs. It is recommended, based on the findings of this research, that the DSD also initiate a broad strategy to encourage skilled South Africans to volunteer their services to non-profit boards, and that the Department establish a training, advisory and support resource, to focus on matters of governance for NPOs.

8.2

RECOMMENDATIONS FOR FUTURE WORK

As a result of the exploratory nature of this research project, the findings and recommendations contained in this Report have raised a number of issues for future research. They are as follows:

- South Africa's historical development: This Report suggests that South Africa's historical development has significantly impacted on the development, support and growth of the two forms of target organisations, and on their governance practices. Evidence of this surfaced at different stages of the research. Further research into the impact of this legacy on governance practices would provide a deeper contextual analysis for the findings.
- Legislation: The legislative environment pertaining to NPOs has developed significantly since the dawn of democracy in South Africa. This has gradually expanded the formalisation of the legal responsibilities of board members. Further research into this would establish more fully the impact of this trend on the effectiveness of governance within the target organisations.
- Funding practices: This study suggests that funding practices have, to some extent, impacted on the governance of the target organisations. Further research into funding practices is required to understand more fully the nature of this impact and to formulate recommendations with regard to developing funding practices that are supportive of effective governance.
- Emergence, size and nature of non-profit networks operating in South Africa: This research project focused on national networks that are registered in terms of the NPO Act. In order to fully understand the breadth and scope of network governance in South Africa, further research is required that focuses on the wider spectrum of networks and their emergence.
- Historical and current contribution of advocacy and service delivery organisations to South Africa's democracy: Further in-depth research is required to determine more precisely the current role and impact of NPOs in South Africa's democracy, with particular reference to the advocacy and service delivery functions played by these organisations. As social welfare needs increase and the state becomes more limited in providing effective and fully accessible services, the role of the non-profit sector in delivering welfare services becomes more significant.
- Implications of a possible decline in the sustainability of civil society organisations: Poor governance coupled with lack of funding could well lead to a major decline in the number of NPOs in the country. Research is required on the implications of this potential shrinkage both for South Africa's democracy and for the reliance of government on NPOs to deliver particular sets of social services.

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APPENDICES

Appendix 1

Research participants

- Self-administered survey for participating organisations
- Focus group participants
- Stakeholder reference group participants

Appendix 2

National bodies – questionnaire and data

- Self-administered survey for national non-profit bodies
- Selected survey results: national non-profit bodies

Appendix 3

National networking organisations – questionnaire and data

- Self-administered survey for national networking organisations
- Selected survey results: national networking organisations

Appendix 4

Structured interview questions

- Structured interview questions for national non-profit bodies
- Structured interview questions for national networking organisations
- Structured interview questions for National Lotteries Board
- Structured interview questions for SARS Tax Exemption Unit
- Structured interview questions for government officials
- Structured interview questions for NGO experts
- Structured interview questions for donors

Appendix 5

Proposals from key informants and focus groups

- Proposals from key informants
- Proposals from focus groups

Appendix 6

Reference group meeting minutes

Appendix 1 RESEARCH PARTICIPANTS

Self-administered survey –participating organisations

1. Adult Learning Network
2. Afrikaanse Christelike Vroue Vereeniging National Council (ACVV)
3. Age in Action
4. Aids Consortium
5. BADISA
6. Childline South Africa
7. Deaf Federation of South Africa (DEAFSA)
8. Disabled People South Africa (DPSA)
9. Epilepsy SA
10. Groundwork Trust
11. National Association of Child Care Workers South African Congress of Early Childhood Development (SACECD)
12. National Council of SPCAs
13. National Welfare Service & Development Forum (The Forum)
14. The Caring Network
15. The National Council for Persons with Physical Disabilities South Africa (NCPDPSA)
16. The South African Association of Youth Clubs
17. The South African Business Coalition against HIV & Aids

Focus group participants

1. Ansie Ramalho – Institute of Directors (IoD)
2. Cathy Masters – C Masters Development Services (CMDs)
3. Colleen du Toit – Charities Aid Foundation Southern Africa (CAFSA)
4. Fazila Farouk – South African Civil Society Information Service (SACsIS)
5. Marcus Coetzee – Business Sculptors
6. Piros Shaw Camay – Co-operative for Research and Education (CORE)

Reference group participants

1. Age in Action, Martha Mokholo
2. Afrikaanse Christelike Vroue Vereeniging, Shanie Boshoff
3. Badisa, Rev Averall Rust
4. Child Welfare SA (CWSA), Thelma Mathee
5. Community Organisation Regional Network, SA (CORN SA), Florence Nene
6. DEAFSA, Francis Prinsloo
7. Disabled People South Africa, Jolene March
8. Epilepsy South Africa, Noelene De Goede
9. Family And Marriage Society of South Africa (FAMSA), Dukie Mothiba
10. Happy Family Care Centre, Dr Van Tonder
11. The National Council for Persons with Physical Disabilities South Africa (NCPDPSA), Johan Viljoen
12. The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO)
13. South African Federation for Mental Health (SAFMH), Solly Mokgata
14. South African Congress for Early Childhood Development (SACECD), Leonard Saul
15. South African National Council on Alcoholism and Drug Dependence (SANCA National), Mabiki Mtshali
16. The South African National NGO Coalition (SANGOCO), Jacob Molapisi
17. Suid-Afrikaanse Vrouefederasie (SAVF), Rina Scholtz
18. Women's National Coalition (WNC), Laura Kganyago

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Appendix 2 NATIONAL BODIES – QUESTIONNAIRE AND DATA

Self-administered survey for national non-profit bodies

NATIONAL SURVEY: NATIONAL NON-PROFIT BODIES

To assess distinctive non-profit governance practices within national bodies and national networking organisations

We kindly request that either the Chairperson, CEO or a board member or senior staff member who has been with the organisation for at least three years complete the form and return it to Inyathelo on or before 18 July 2008 to:

Inyathelo
PO Box 43276
Woodstock 7915
Email: ricardo@inyathelo.co.za or peter@inyathelo.co.za
Fax: 021 465 6953

Commissioned by the National Department of Social Development



social development

Department:
Social Development
REPUBLIC OF SOUTH AFRICA

CONTACT DETAILS

Name of Organisation: _____

Name and Surname of Contact Person: _____

Designation: _____

Telephone No.: _____

Fax No.: _____

E-mail address: _____

We confirm that the name of the person completing this form and that of the organisation will not be disclosed to third parties.

SECTION 1: ORGANISATIONAL

1. Where is the organisation's national office located?

<i>Province</i>		<i>Mark with X (select one)</i>	
Eastern Cape		Mpumalanga	
Free State		Northern Cape	
Gauteng		North West	
KwaZulu Natal		Western Cape	
Limpopo		Outside South Africa	

2. How long has the organisation been in existence?

<i>Number of Years</i>		<i>Mark with X (select one)</i>	
0–3		20–29	
4–9		More than 30 years	
10–19		Don't know	

3. Form of legal entity:

<i>Legal Entity</i>	<i>Mark with X</i>
Voluntary Association	
Non-Profit Trust	
Section 21 Company	
Other (please specify)	

4. Is the organisation registered in terms of the NPO Act?

Yes No

5. Is the organisation an approved Public Benefit Organisation?

Yes No

6. In which sector is the organisation operating?

<i>Sector of operation</i>		<i>Mark with X (select only one)</i>	
Charity		Urban/Rural Dev.	
Education		Advocacy/ Policy	
Arts & Culture		Environmental	
Social Development		Health	
Housing		Sports & Recreation	
Welfare		Gender	
Other (please specify)			

SECTION 2: GOVERNANCE OF THE ORGANISATION

7. Which best describes the governance structure of the organisation?

<i>Organisational governance structure</i>	<i>Mark with X</i>
Board is appointed by individual members only	
Board is appointed by organisational members only	
Board is appointed by individual & organisational members	
Self-appointed board without members	
Other (please specify)	

If appointed by members, please indicate the number of members:

_____ Individual Members

_____ Organisational Members

8. How many people are currently serving on the board?

_____ board members (if none please indicate '0')

9. Indicate how many board members are:

_____ Black Female

_____ Black Male

_____ White Female

_____ White Male

_____ With disability

10. Kindly estimate the number of board members that fall in the following age groups:

_____ Under 35

_____ 36 – 50

_____ 51 – 65

_____ 65 – Older

11. Do any of the board members serve on corporate boards?

___ Yes

___ No

12. Does the board have a smaller executive committee?

___ Yes

___ No

13. Does the organisation has a budget for board development/training?

___ Yes

___ No

14. When last was governance training arranged for the board?

<i>Governance Training</i>	<i>Mark with X</i>
Within last 6 months	
Within last 12 months	
Within last 2 years	
Within last 3 years	
More than 3 years ago	
Never	
Don't know	

15. What areas of experience or skills may be missing from the current board?

<i>Areas of experience/skills</i>	<i>Mark with X</i>
Governance	
Legal	
Financial	
Fundraising	
Strategic Thinking	
Business	
Advocacy	
Government	
Gender	
Programme Specific (e.g. health, children)	
Community	
Other (please specify)	

16. Rate the board performance on the following areas:

	<i>Poor</i>	<i>Fair</i>	<i>Good</i>	<i>Excellent</i>	<i>Not Applicable</i>
Governance Oversight					
Financial Oversight					
Strategic Direction					
Evaluating the CEO					
Setting Policy					
Fundraising					
Risk Assessment					
CEO Succession Planning					
Monitoring Programmes					
Board Evaluation					

17. Please indicate if the organisation has in place written policies/procedures dealing with the following matters:

<i>Organisational Policies</i>	<i>Yes</i>	<i>No</i>	<i>Don't know</i>
Recruitment of new board members			
Human Resources			
Board Development			
Risk Assessment			
Conflict of Interest			
Succession of the CEO			
Financial Management			

18. Recruitment and orientation of board members:

<i>Recruitment of board members</i>	<i>Yes</i>	<i>No</i>	<i>Not sure</i>
The organisation has adopted a plan to recruit new board members			
New board members are introduced to the staff of the organisation			
New board members are provided with written copies of policies			

SECTION 3: ORGANISATIONAL RESOURCES

19. During the past year, what percentage of the organisation’s funding came from:

	<i>0%</i>	<i>1 – 24%</i>	<i>25 - 49%</i>	<i>49 – 74%</i>	<i>75 – 100%</i>
Government					
Local Corporations					
Local Individuals					
Local Foundations					
International Donors					
Membership Fees					
Income Generation					
Lotteries Board or NDA					

20. What is the nature of the organisational funding?

<i>Nature of the main funding</i>	<i>Mark with X</i>
Short-term project funding (under 3 years)	
Long-term project funding (over 3 years)	
Short-term core funding (under 3 years)	
Long-term core funding (over 3 years)	
Don't know	

21. What was the annual budget of the organisation during 2007?

<i>Annual Budget for 2007</i>	<i>Mark with X</i>
R0 to R99 999	
R100 000 to R499 999	
R500 000 to R999 999	
R1 000 000 to R1 999 999	
R2 000 000 to R4 999 999	
R5 000 000 to R9 999 999	
Above R10 000 000	

22. How many paid full-time staff members are employed in the organisation?

_____ Paid full-time paid staff (if none please indicate '0')

23. How many volunteers (excluding the board members) are supporting the activities of the organisation?

_____ Volunteers (if none please indicate '0')

24. Has the organisation retrenched staff within the last three years?

Yes No

If yes, please indicate how many staff members have been retrenched within the last three years:

<i>Staff retrenchment</i>	<i>Mark with X (select one)</i>
1	11 - 14
2 - 4	More than 15
5 - 10	Don't know

25. Have any of the staff resigned within the last three years?

Yes No

If yes, please indicate how many staff resigned within the last three years.

<i>Number of resignations</i>	<i>Mark with X</i>
1 staff member	
2 - 4 staff members	
5 - 10 staff members	
More than 10 staff members	
Don't know	

If staff did resign, please indicate if those vacancies were filled again:

<i>Filling of vacancies</i>	<i>Mark with X</i>
All vacancies were filled	
No vacancies were filled	
Some vacancies were filled	
Don't know	

SECTION 4: ORGANISATIONAL PLANNING

26. Does the organisation regularly review its vision statement?

Yes No

If yes, when last did the organisation review its vision statement?

<i>Review of vision</i>	<i>Mark with X</i>
Within last 12 months	
Within last 2 years	
Within last 3 years	
Within last 5 years	
Over 5 years ago	

27. When last did the board monitor the organisation's progress towards the vision?

<i>Monitor of progress towards vision</i>	<i>Mark with X</i>
Within last 12 months	
Within last 2 years	
Within last 3 years	
Within last 5 years	
Over 5 years ago	

SECTION 5: MEETINGS OF THE ORGANISATION

28. How often should board meetings be conducted in terms of the organisation's founding document?

<i>Board meetings</i>	<i>Mark with X</i>
Once a year	
Twice a year	
Three times a year	
Quarterly	
Other	

29. Please indicate how often board meetings are held:

<i>Board meetings</i>	<i>Mark with X</i>
Once a year	
Twice a year	
Three times a year	
Quarterly	
Other	

30. For membership organisations, indicate how often members should meet in terms of the organisation's founding document:

<i>Meetings of members</i>	<i>Mark with X</i>
Once a year	
Twice a year	
Every second year	
Every third year	

31. For membership organisations, please indicate how often the members do meet:

<i>Meetings of members</i>	<i>Mark with X</i>
Once a year	
Twice a year	
Every second year	
Every third year	

32. For membership organisations, indicate how members are informed of organisational activities:

<i>Informing members</i>	<i>Mark with X</i>
Regular newsletters	
Email	
Meetings	
Other (please specify)	

33. Does the organisation invite broader stakeholders to its Annual General Meetings?

___ Yes ___ No

Selected survey results: national non-profit bodies

1. Legal structure/entity



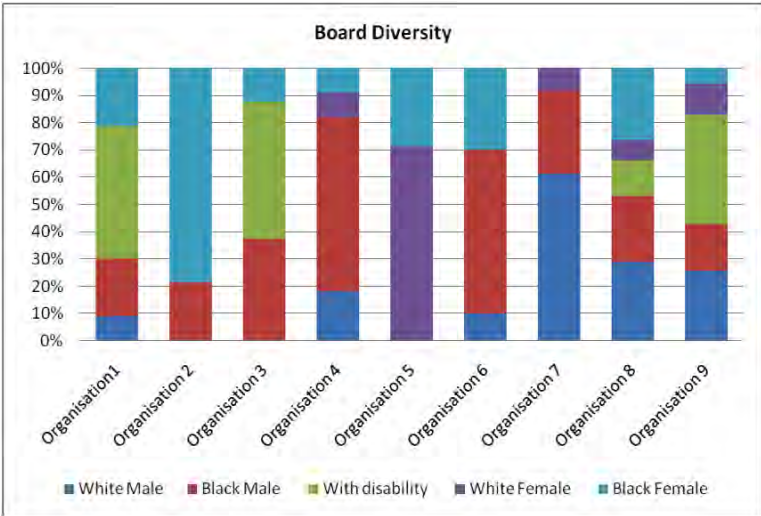
2. Number of individual and organisational members

	Org 1	Org 2	Org 3	Org 4	Org 5	Org 6	Org 7	Org 8	Org 9
Individual Members	0	0	0	0	X	2 359	21	960	13
Organisational Members	104	10 000	35	950	X	52	15	0	41

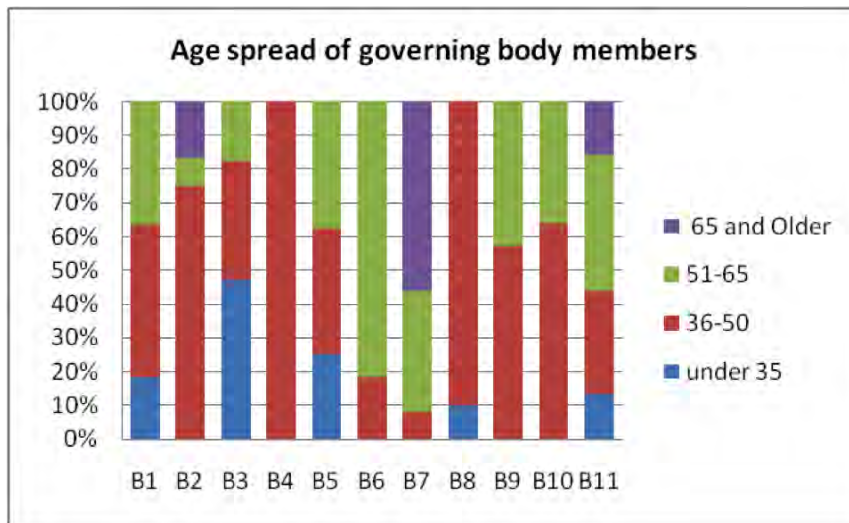
3. Number of members currently serving on the governing board

	Org 1	Org 2	Org 3	Org 4	Org 5	Org 6	Org 7	Org 8	Org 9
Board members	17	14	7	11	24	10	36	72	21

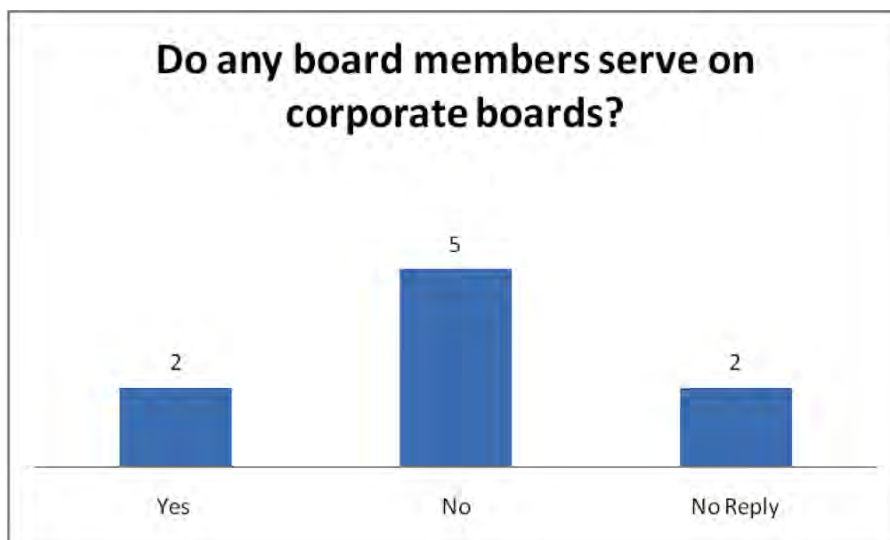
4. Composition of the board



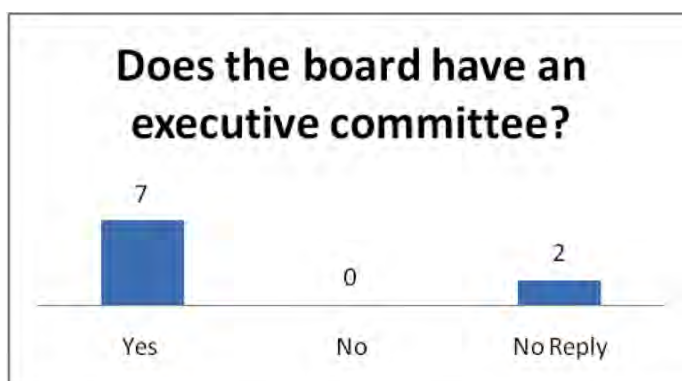
5. Age of board members



6. Members on corporate boards



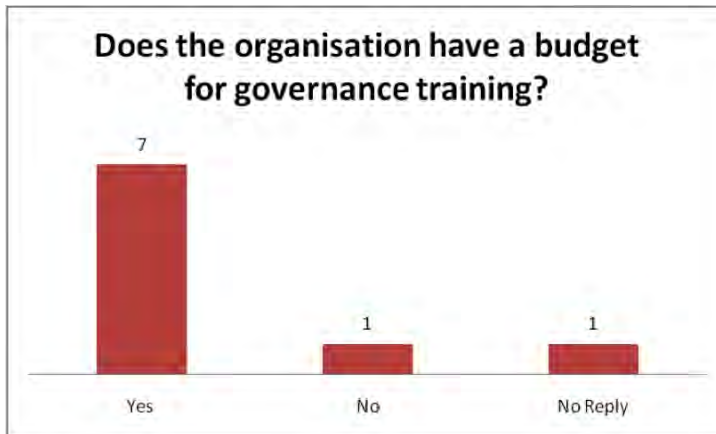
7. Executive committee



8. Governance structure



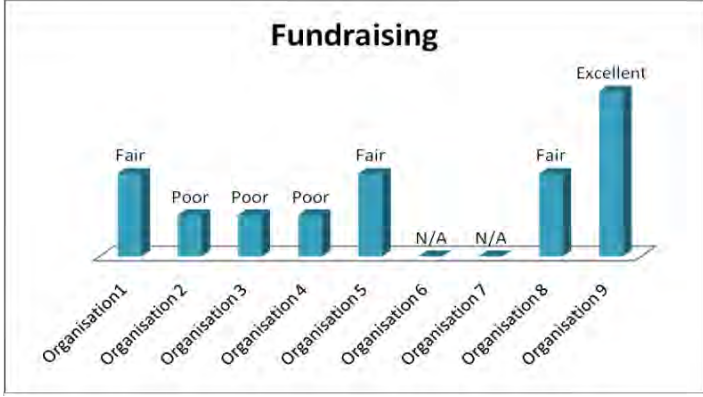
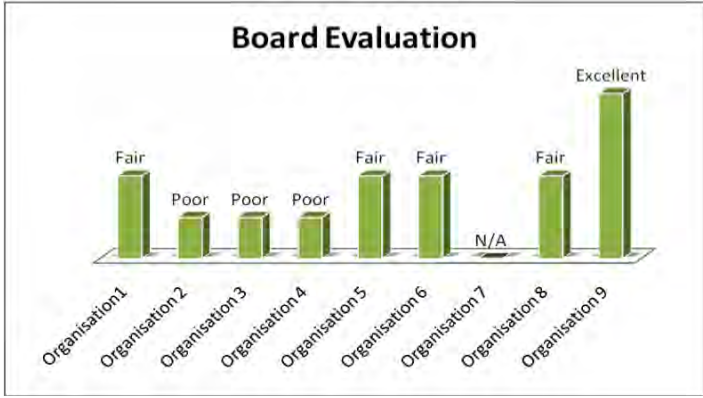
9. Budget for board training/development



10. Last governance training



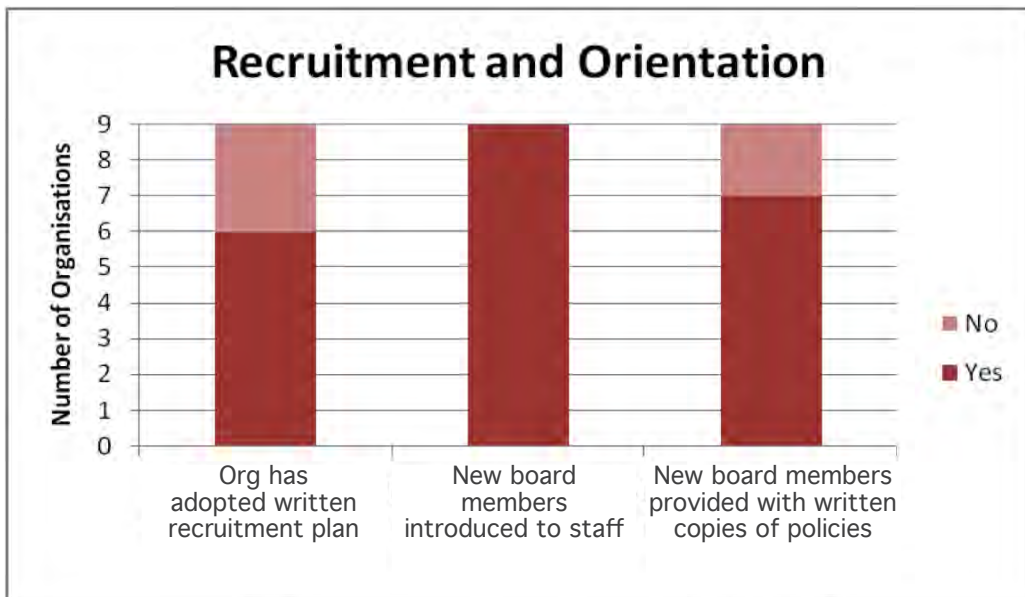
11. Board performance: self-evaluation by nine national bodies



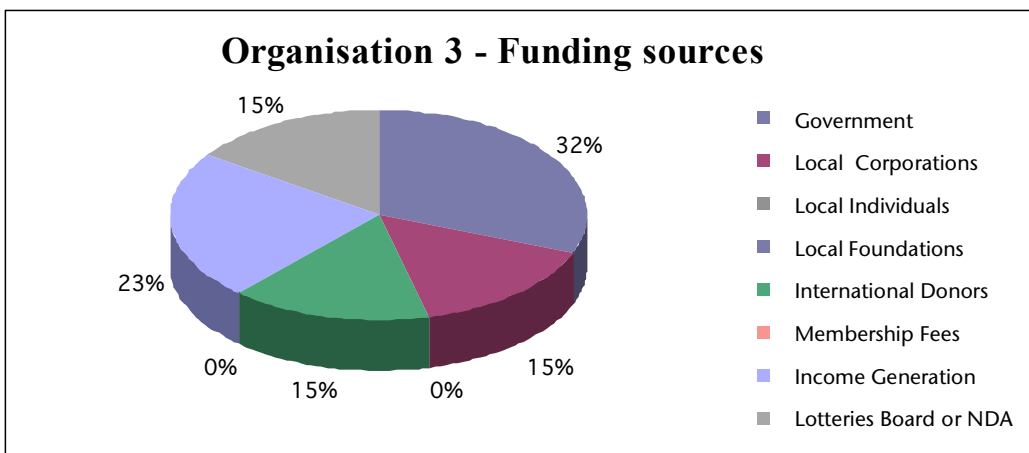
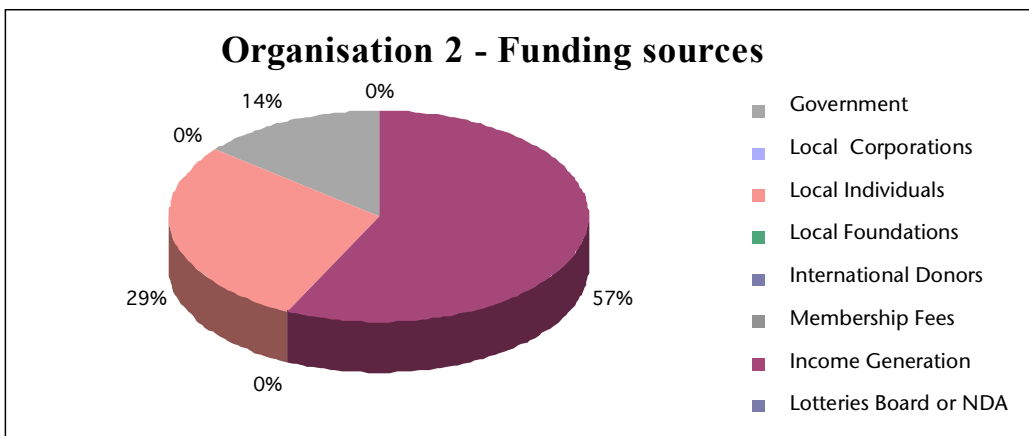
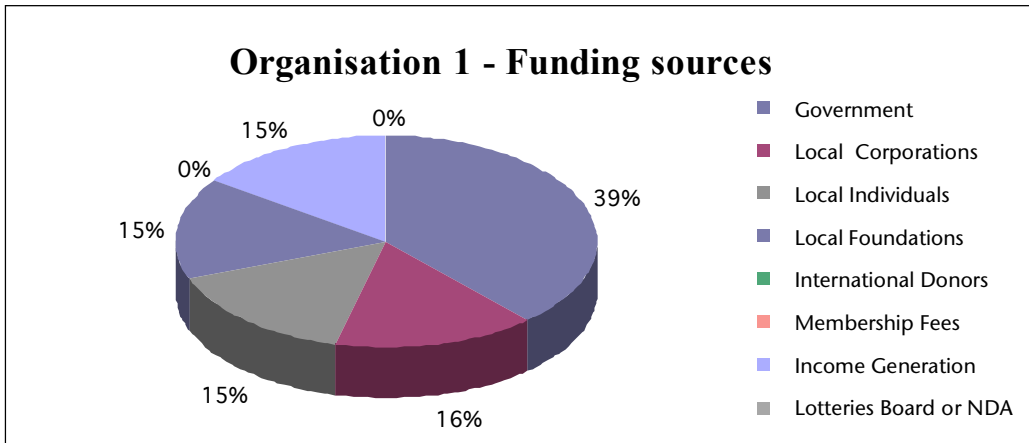
12. Written organisational policies



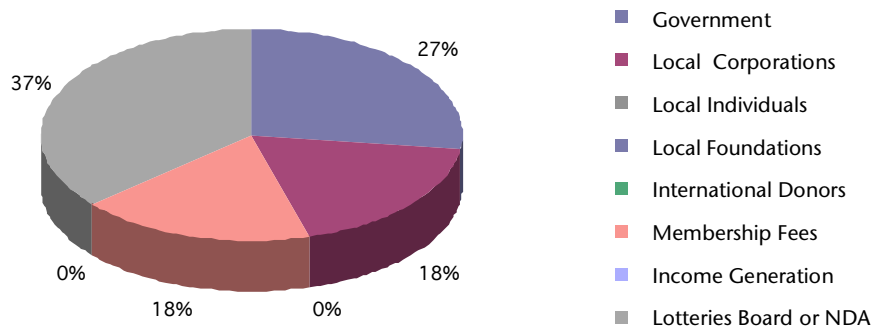
13. Recruitment and orientation



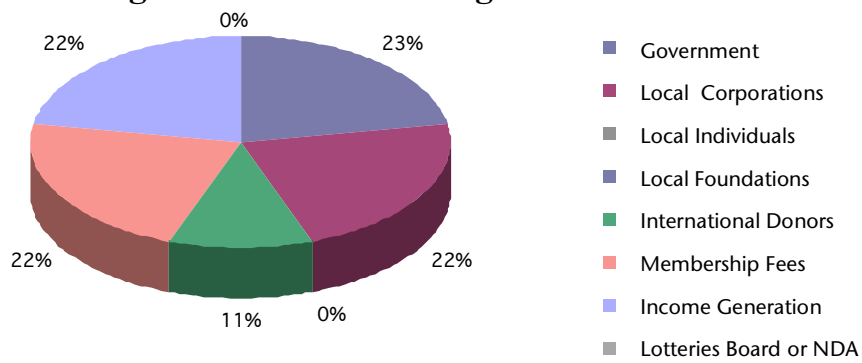
14. Sources and nature of organisational funding



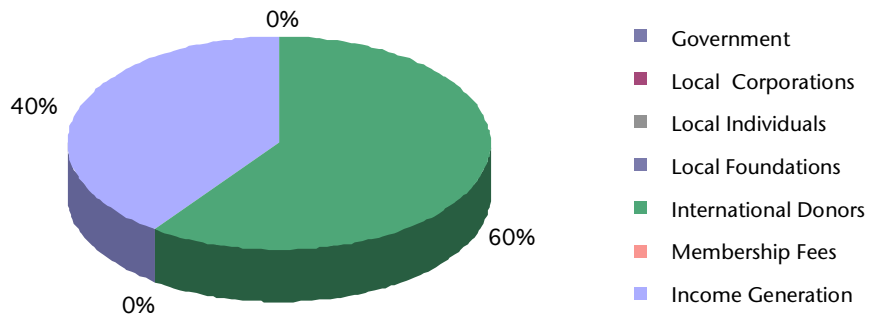
Organisation 4 - Funding sources



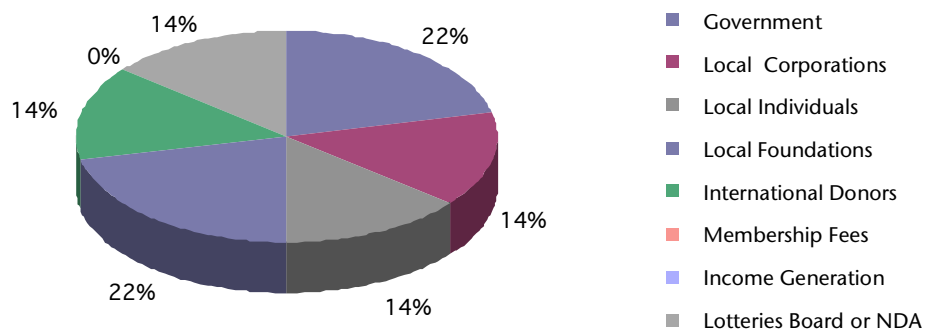
Organisation 5 - Funding sources

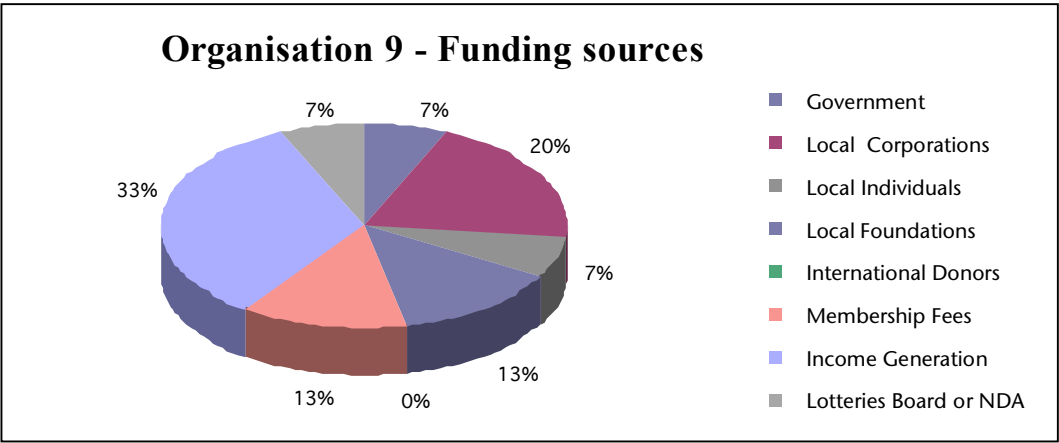
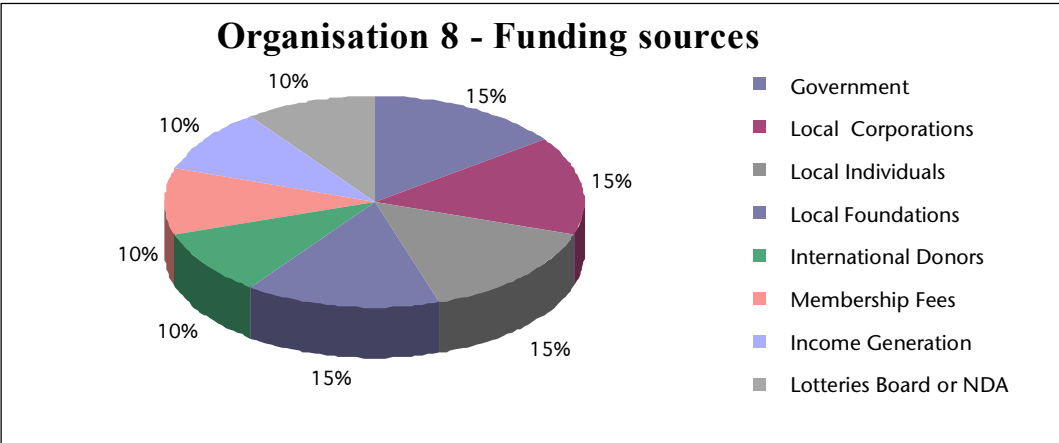


Organisation 6 - Funding sources



Organisation 7 - Funding sources





15. Paid full-time staff members

	Org 1	Org 2	Org 3	Org 4	Org 5	Org 6	Org 7	Org 8	Org 9
Full-time staff members	61	7	57	100	26	40	x	203	11

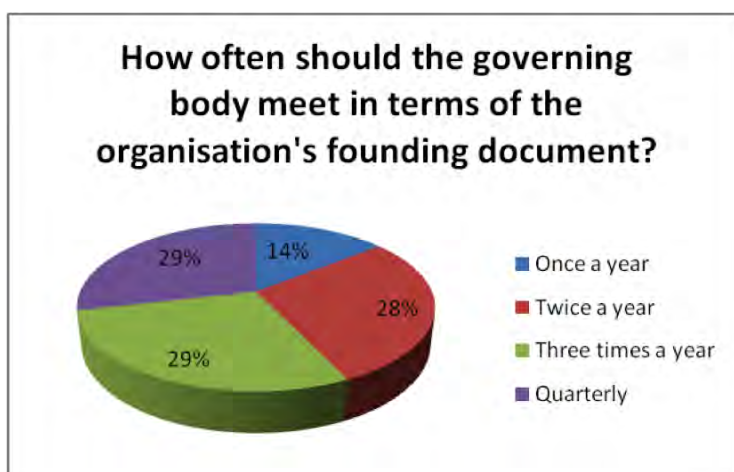
16. Number of volunteers, excluding board members

	Org 1	Org 2	Org 3	Org 4	Org 5	Org 6	Org 7	Org 8	Org 9
Volunteers	88	500	18	101	9 000	0	12 500	141	500

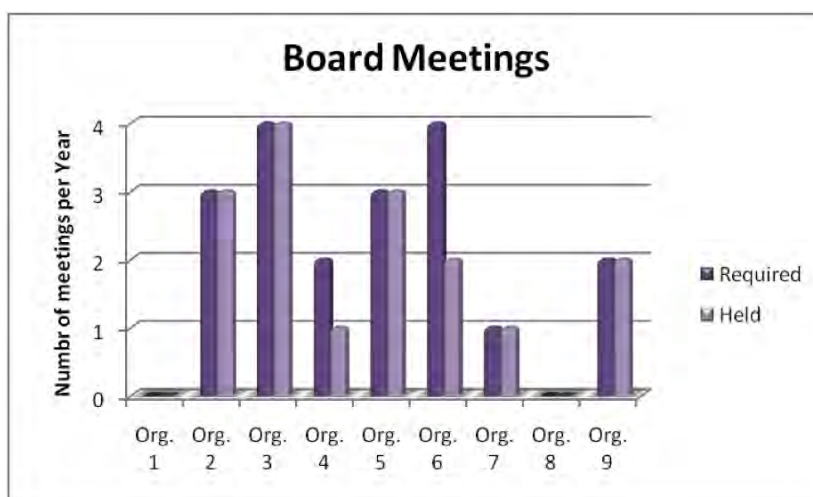
17. Vision statement review



18. Frequency of board meetings specified in the founding document



19. Frequency of board meetings held



20. Frequency of required membership meetings and meetings held

	Org 1	Org 2	Org 3	Org 4	Org 5	Org 6	Org 7	Org 8	Org 9
Meetings Required	Every four years	Every third year	Every four years	Every second year	10 x p/a	Every second year	X	Once a year	Every second year
Meetings Held	Every four years	Every third year	Every four years	Every second year	10 x p/a	Every second year	X	Once a year	Every second year

Appendix 3 NATIONAL NETWORKING ORGANISATIONS – QUESTIONNAIRE AND DATA

Self-administered survey for national networking organisations

NATIONAL SURVEY: NATIONAL NETWORKING ORGANISATION

We kindly request that either the Chairperson, CEO or a board member or senior staff member who has been with the organisation for at least three years complete the form and return it to Inyathelo on or before 18 July 2008 to:

Inyathelo
PO Box 43276
Woodstock 7915
Email: ricardo@inyathelo.co.za or peter@inyathelo.co.za
Fax: 021 465 6953

Commissioned by the National Department of Social Development.



social development

Department:
Social Development
REPUBLIC OF SOUTH AFRICA

CONTACT DETAILS

Name of Organisation: _____

Name and Surname of Contact Person: _____

Designation: _____

Telephone No.: _____ Fax No.: _____

E-mail address: _____

We confirm that the name of the person completing this form and that of the organisation will not be disclosed to third parties.

SECTION 1: INFORMATION ON NETWORK

1. Where is the network's national office located?

<i>Province</i>		<i>Mark with X (select one)</i>	
Eastern Cape		Mpumalanga	
Free State		Northern Cape	
Gauteng		North West	
Kwa-Zulu Natal		Western Cape	
Limpopo		Outside South Africa	

2. How long has the network been in existence?

<i>Number of Years</i>		<i>Mark with X (select one)</i>	
0 – 3		20 – 29	
4 – 9		More than 30 years	
10 – 19		Don't know	

3. Please indicate the network's form of legal entity:

<i>Legal Entity</i>	<i>Mark with X</i>
Voluntary Association	
Non-Profit Trust	
Section 21 Company	
Other (please specify)	

4. Is the network registered in terms of the NPO Act?

___ Yes ___ No

5. Is the network an approved Public Benefit Organisation?

___ Yes ___ No

6. In which sector is the network operating?

<i>Sector of operation</i>		<i>Mark with X (select only one)</i>	
Charity		Urban/Rural Dev.	
Education		Advocacy/ Policy	
Arts & Culture		Environmental	
Social Development		Health	
Housing		Sports & Recreation	
Welfare		Gender	
Other (please specify)			

SECTION 2: GOVERNANCE OF THE NETWORK

7. Which best describes the governance structure of the network?

<i>Network governance structure</i>	<i>Mark with X</i>
Shared Governance Structure	
Lead organisation appointed	
Network Secretariat	
Steering Committee	
Separate legal entity formed	
Other (please specify)	

8. How many members are currently serving on the network governing body?

_____ network governing body members (if none please indicate '0')

9. How many members does the network have?

_____ Individual Members (if none please indicate '0')

_____ Organisational Members (if none please indicate '0')

10. Are board members democratically elected by the network members?

____ Yes ____ No

11. How many people on the network governing body are:

_____ Black Female _____ Black Male

_____ White Female _____ White Male

_____ With Disability

12. Do any of the members of the network governing body serve on corporate boards?

____ Yes ____ No

13. Kindly estimate the number of members the network governing body fall in the following age groups:

_____ Under 35

_____ 36 – 50

_____ 51 – 65

_____ 65 – Older

14. Does the network have a budget for governance training?

____ Yes ____ No

15. When last was governance training arranged for the network governing body?

<i>Governance Training</i>	<i>Mark with X</i>
Within last 6 months	
Within last 12 months	
Within last 2 years	
Within last 3 years	
More than 3 years ago	
Never	
Don't know	

16. What areas of experience or skills may be missing from the current network governing body?

<i>Areas of experience/skills</i>	<i>Mark with X</i>
Governance	
Legal	
Financial	
Fundraising	
Strategic Thinking	
Business	
Advocacy	
Government	
Gender	
Programme Specific (e.g. health, children)	
Community	
Other (please specify)	

17. Rate the network governing body's performance in the following areas:

	<i>Poor</i>	<i>Fair</i>	<i>Good</i>	<i>Excellent</i>	<i>Not Applicable</i>
Governance Oversight					
Financial Oversight					
Strategic Direction					
Evaluating the CEO					
Setting Policy					
Fundraising					
Risk Assessment					
CEO Succession Planning					
Monitoring Programmes					
Board Evaluation					

18. Please indicate if the network has written policies/procedures dealing with the following matters:

<i>Organisational Policies</i>	<i>Yes</i>	<i>No</i>	<i>Don't know</i>
Recruitment for new governing body			
Human Resources			
Staff Development			
Board Development			
Risk Assessment			
Conflict of Interest			
Succession of the CEO			
Financial Management			

19. Are governing body members only recruited from amongst network members?

___ Yes ___ No

20. Are new governing body members provided with written copies of network policies?

___ Yes ___ No

SECTION 3: NETWORK RESOURCES

21. During the past year, what percentage of the network’s funding came from the following sources?

	0%	1 – 24%	25-49%	49 – 74%	75 – 100%
Government					
Local Corporations					
Local Individuals					
Local Foundations					
International Donors					
Membership Fees					
Income Generation					
Lotteries Board or NDA					

22. What is the nature of the network funding?

<i>Nature of the main funding</i>	<i>Mark with X</i>
Short-term project funding (under 3 years)	
Long-term project funding (over 3 years)	
Short-term core funding (under 3 years)	
Long-term core funding (over 3 years)	
Don't know	

23. What was the annual budget of the network during 2007?

<i>Annual Budget for 2007</i>	<i>Mark with X</i>
R0 to R99 999	
R100 000 to R499 999	
R500 000 to R999 999	
R1 000 000 to R1 999 999	
R2 000 000 to R4 999 999	
R5 000 000 to R9 999 999	
Above - R10 000 000	

24. How many paid full-time staff members are employed in the network?

_____ Paid full-time paid staff (if none please indicate '0')

25. How many volunteers (excluding the board members) are supporting the activities of the network?

_____ Volunteers (if none please indicate '0')

26. Has the network retrenched staff within the last three years?

____ Yes ____ No

If yes, please indicate how many staff members have been retrenched within the last three years:

<i>Staff retrenchment</i>	<i>Mark with X (select one)</i>		
1		11 - 14	
2 - 4		More than 15	
5 - 10		Don't know	

27. Has any of the staff resigned within the last three years?

____ Yes ____ No

If yes, please indicate how many staff resigned within the last three years:

<i>Number of resignations</i>	<i>Mark with X</i>
1 staff member	
2 - 4 staff members	
5 - 10 staff members	
More than 10 staff members	
Don't know	

If staff did resign, please indicate if those vacancies were filled again:

<i>Filling of vacancies</i>	
All vacancies were filled	
No vacancies were filled	
Some vacancies were filled	
Don't know	

SECTION 4: PLANNING

28. Does the network regularly review its vision statement?

____ Yes ____ No

If yes, when last did the network review its vision statement?

<i>Review of vision</i>	<i>Mark with X</i>
Within last 12 months	
Within last 2 years	
Within last 3 years	
Within last 5 years	
Over 5 years ago	

29. When last did the network governing body monitor the network's progress towards the vision?

<i>Monitor progress towards vision</i>	<i>Mark with X</i>
Within last 12 months	
Within last 2 years	
Within last 3 years	
Within last 5 years	
Over 5 years ago	

SECTION 5: NETWORK ACTIVITIES

30. Indicate how important the following aspects are within the network:

	<i>Not at all important</i>	<i>Not too important</i>	<i>Somewhat important</i>	<i>Very important</i>
Clearly articulated focus				
Commitment to network values				
Trust amongst members				
Organisational identity				
Serving network members				
Clarifying benefits to members				
Raising funds for the network				
Raising funds for network members				
Regular meetings of network members				

31. Please describe the level of participation amongst network members on network activities: (please select one)

Very Good Satisfactory Unsatisfactory

32. The benefits of being part of the network are clear to the network members:

Yes No

33. How would you rate the network's communication with its members on network activities?

Very Good Satisfactory Unsatisfactory

34. How would you rate the network's ability to fulfill its mission?

Very Good Satisfactory Unsatisfactory

SECTION 6: MEETINGS OF THE NETWORK

35. How often should the governing body meet in terms of the network's founding document?

<i>Board meetings</i>	<i>Mark with X</i>
Once a year	
Twice a year	
Three times a year	
Quarterly	

36. Indicate how often governing body meetings are held:

<i>Board meetings</i>	<i>Mark with X</i>
Once a year	
Twice a year	
Three times a year	
Quarterly	
Other (please specify)	

37. Indicate how often network members meet:

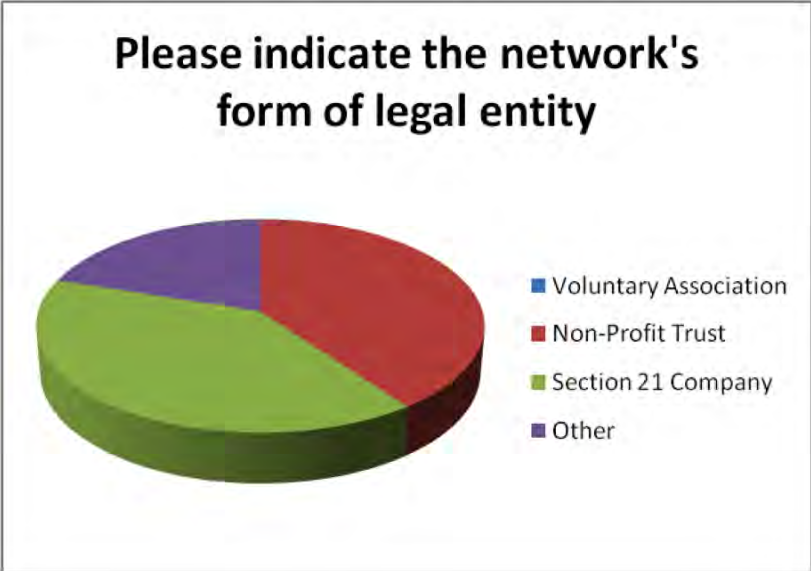
<i>Meetings of members</i>	<i>Mark with X</i>
Once a year	
Twice a year	
Every second year	
Every third year	

38. Indicate how members are informed of organisational activities?

<i>Informing members</i>	<i>Mark with X</i>
Regular newsletters	
Email Notification	
Meetings	
Snail Mail	
Other (please specify)	

Selected survey results: national networking organisations

1. Legal structure/entity



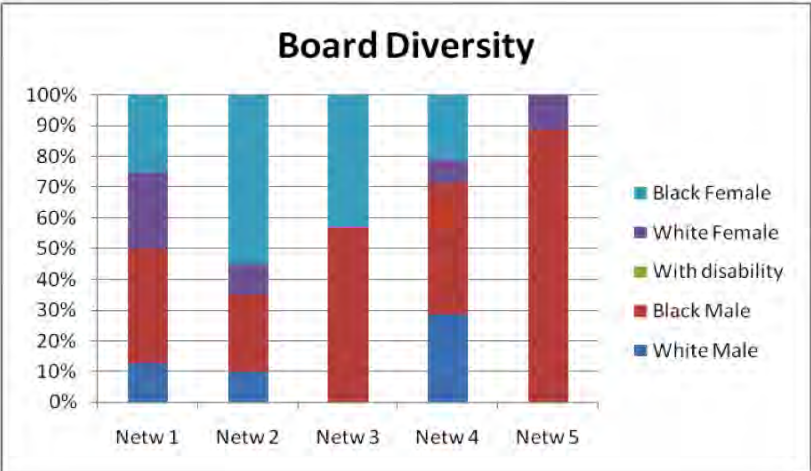
2. Number of individual and organisational members

	Netw 1	Netw 2	Netw 3	Netw 4	Netw 5
Individual Members	300	20	93	0	50
Organisational Members	750	3500	120	153	15

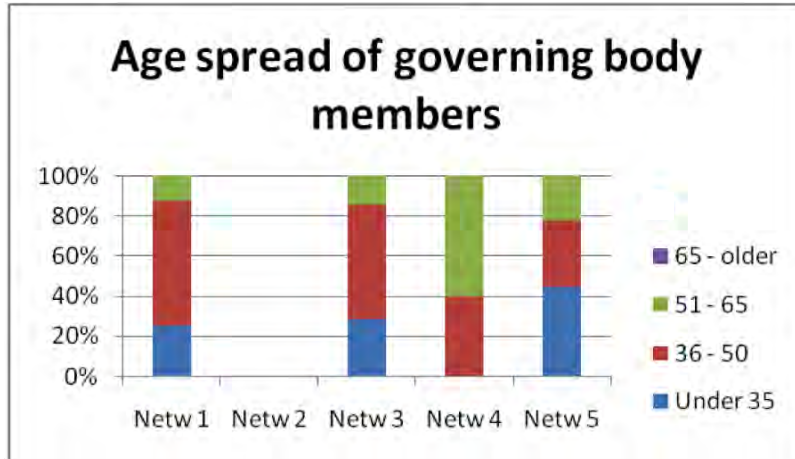
3. Number of members currently serving on the governing board

	Netw 1	Netw 2	Netw 3	Netw 4	Netw 5
Board members	2	20	7	14	9

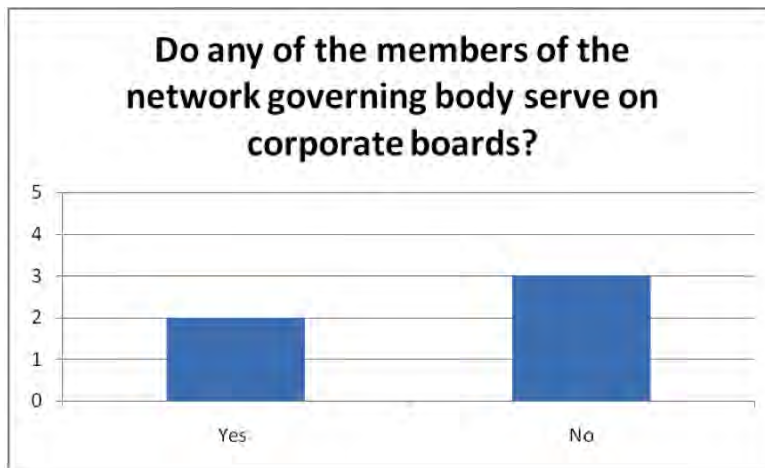
4. Composition of the board



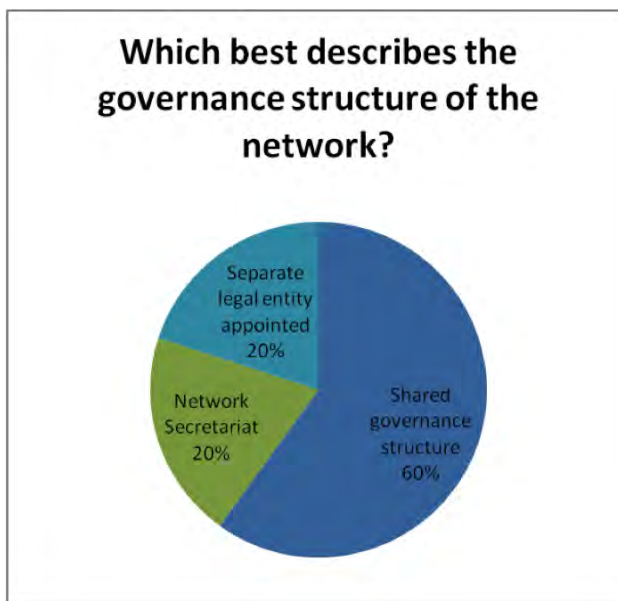
5. Age of board members



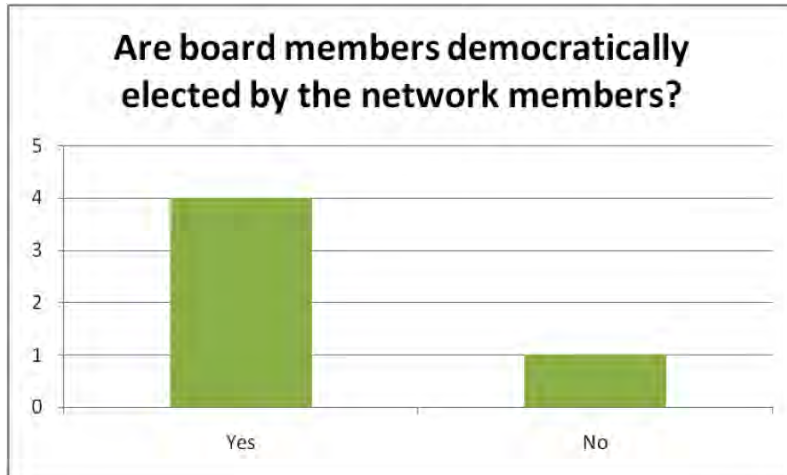
6. Members on corporate boards



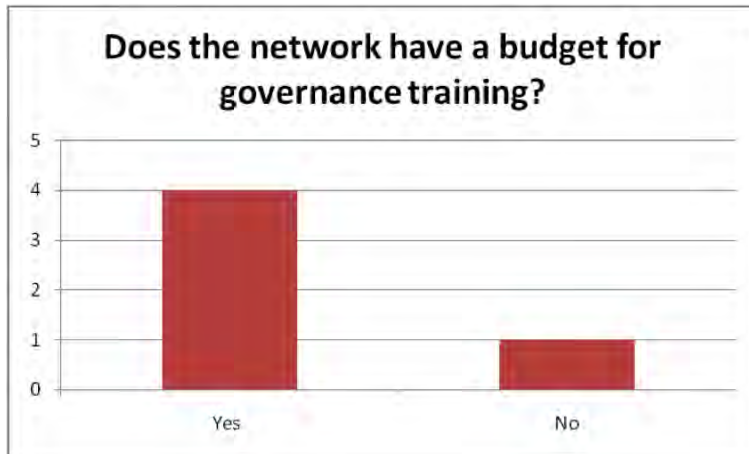
7. Governance structure



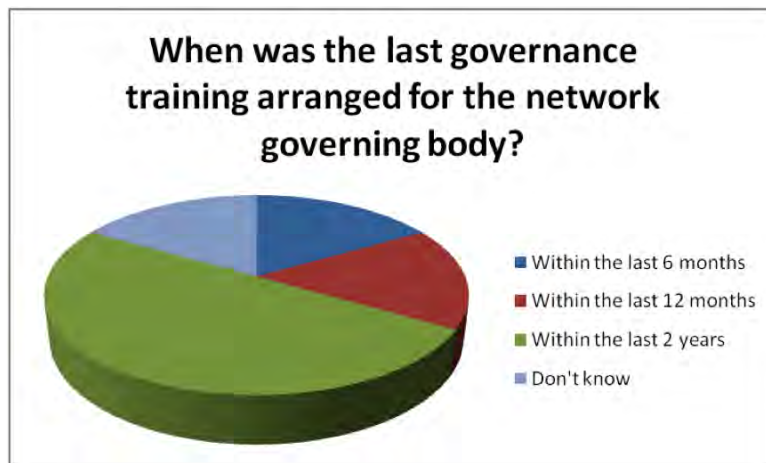
8. Election of board members



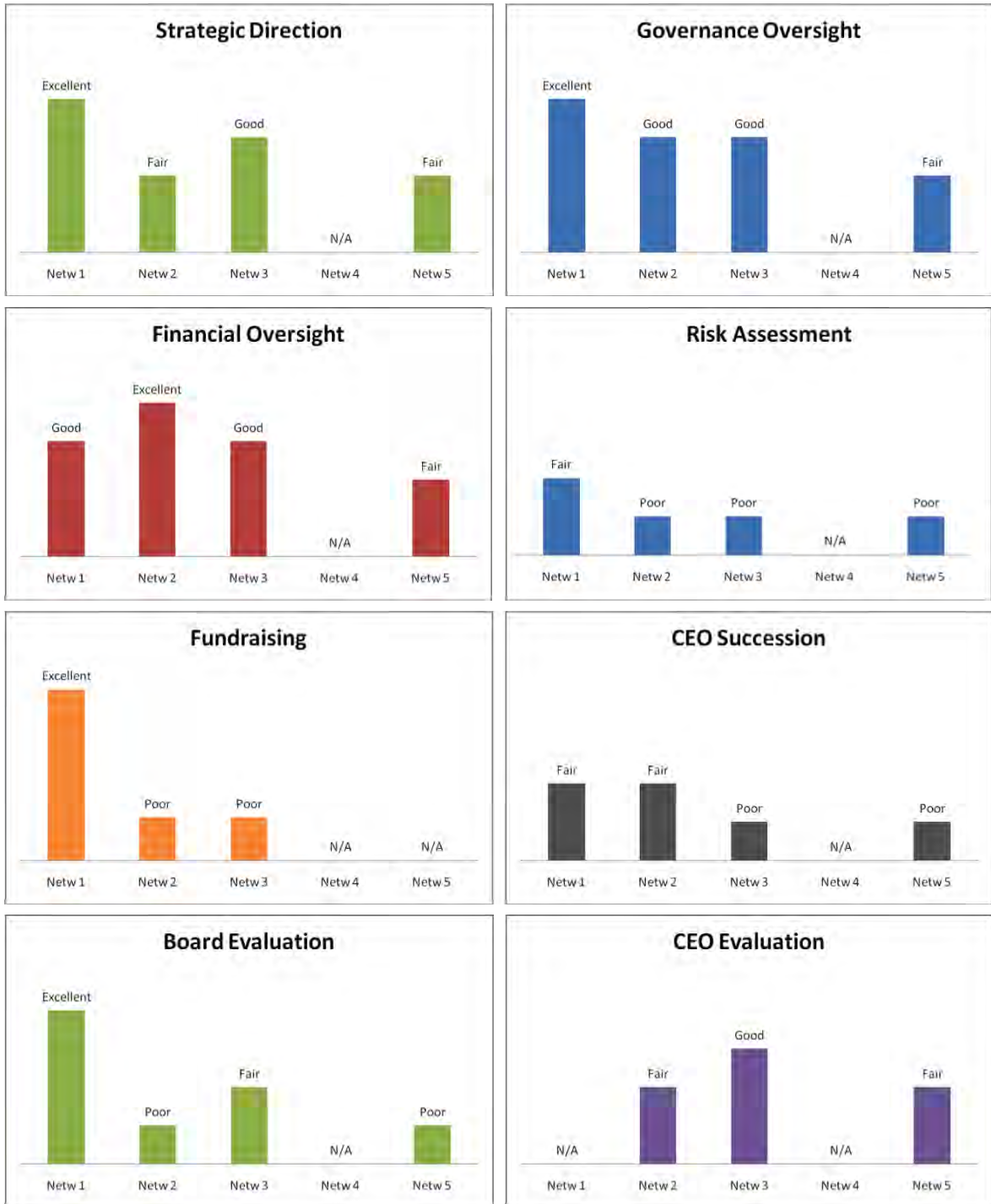
9. Budget for board training/development



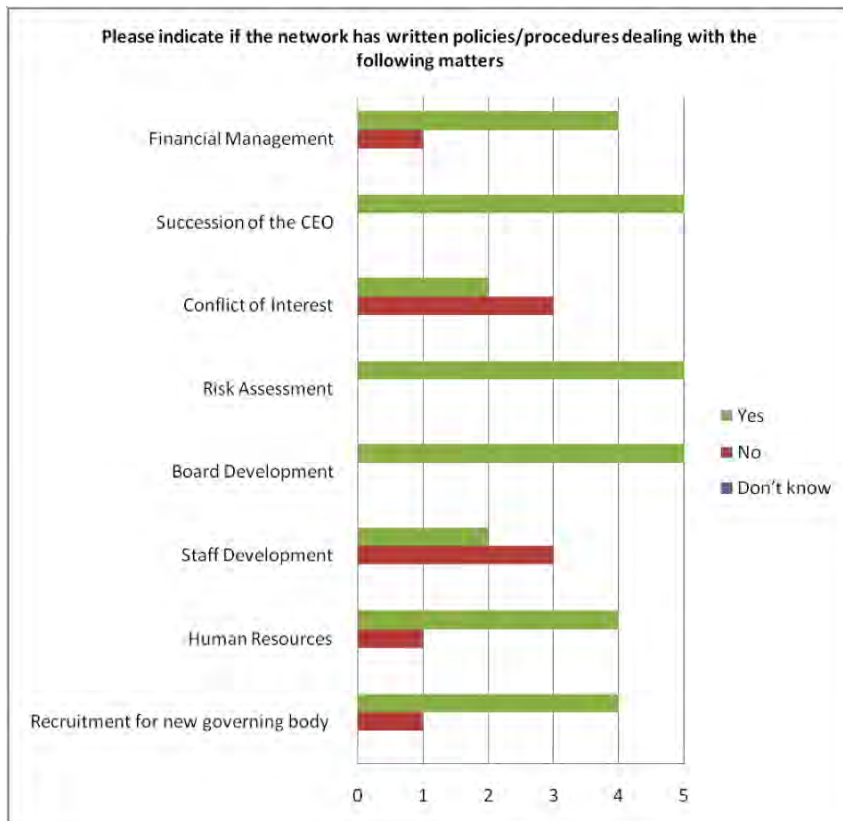
10. Last governance training



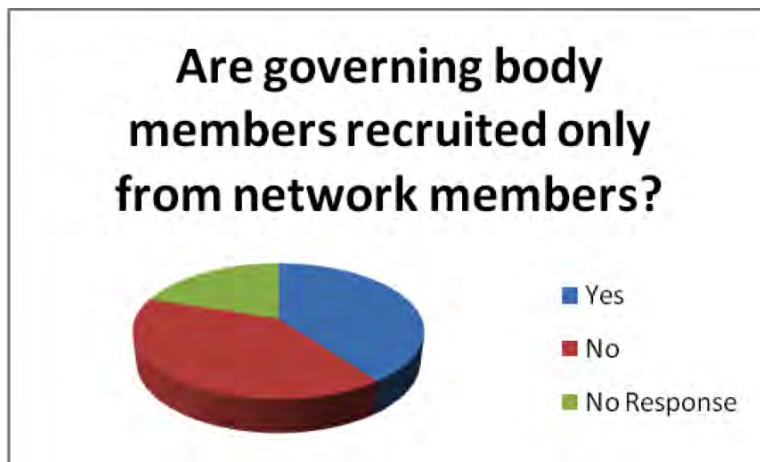
11. Board performance: self-evaluation by five networking organisations



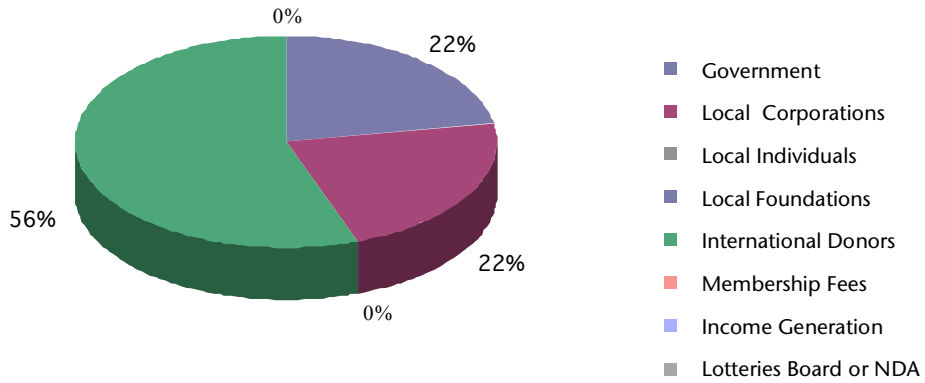
12. Written organisational policies



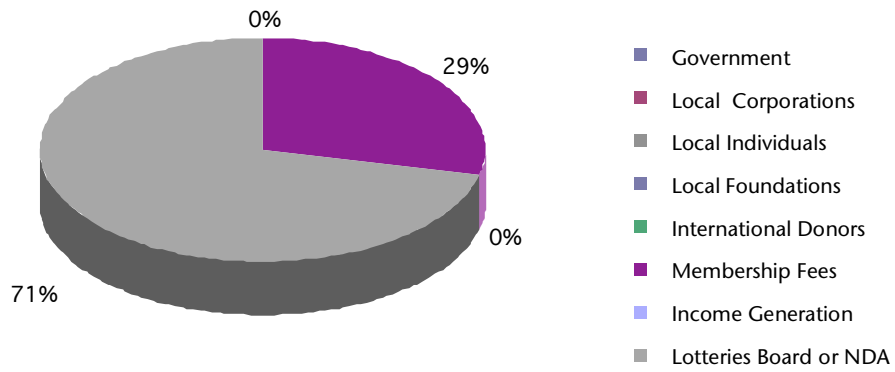
13. Recruitment and orientation



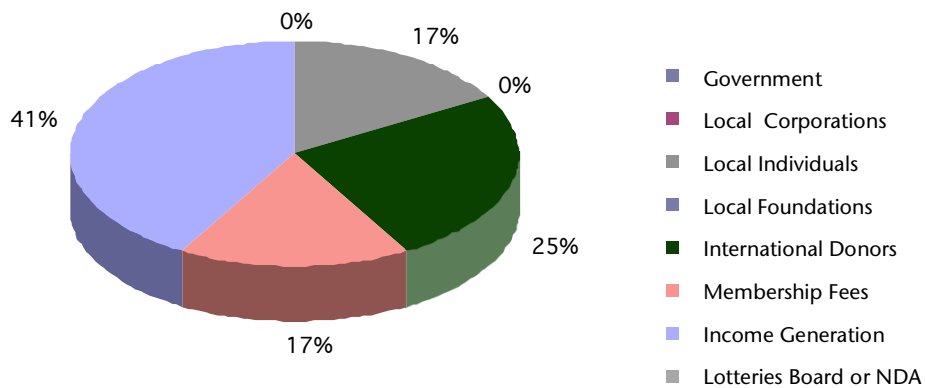
Organisation 1 - Funding sources



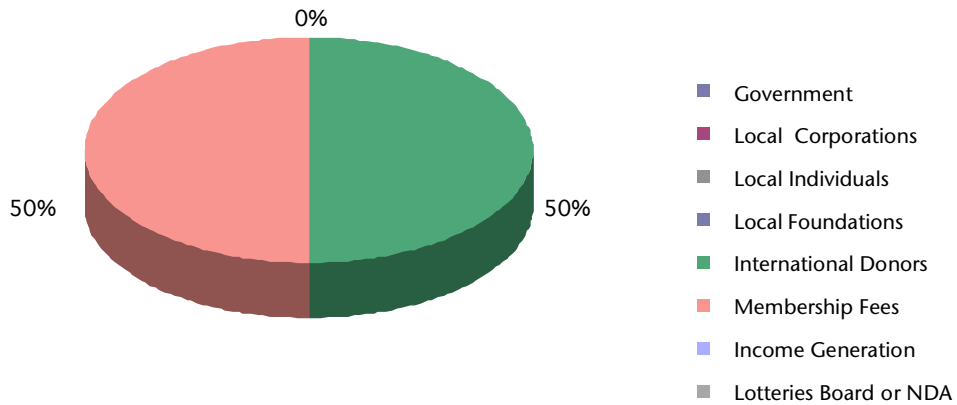
Organisation 2 - Funding sources



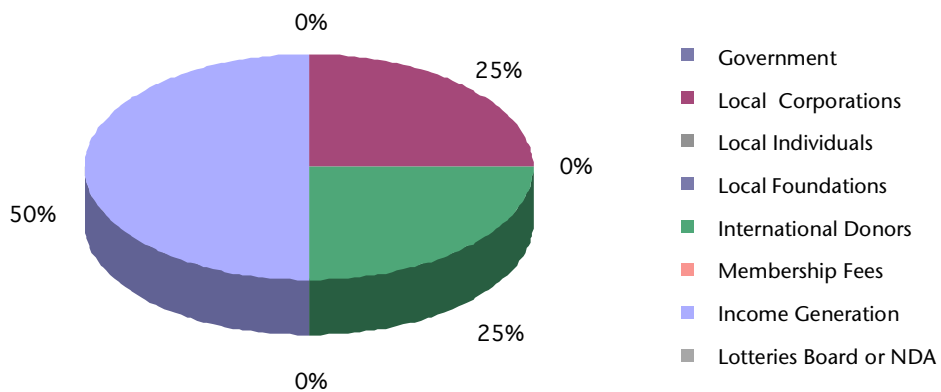
Organisation 3 - Funding sources



Organisation 4 - Funding sources

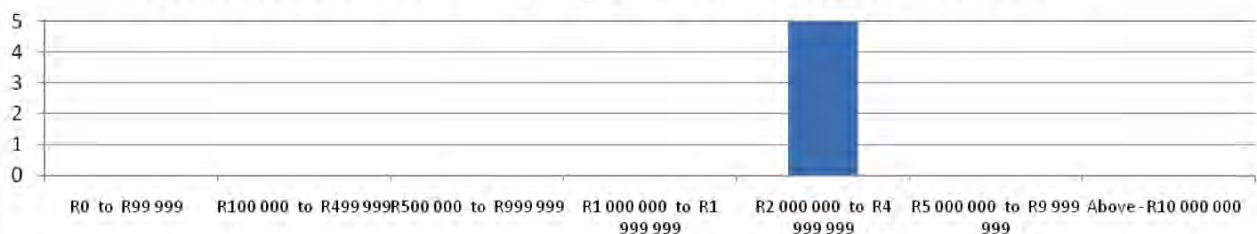


Organisation 5 - Funding sources



15. Annual budget for network

What was the annual budget of the network during 2007?



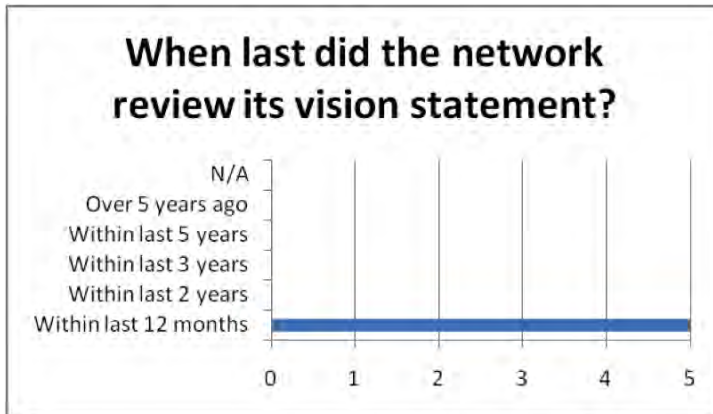
16. Paid full-time staff members

	Netw. 1	Netw. 2	Netw. 3	Netw. 4	Netw. 5
Full-time staff members	16	9	12	10	10

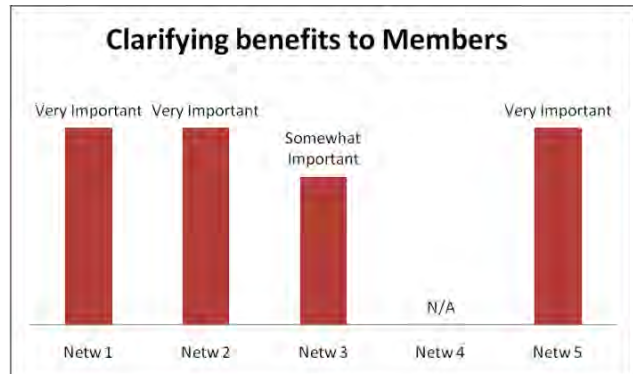
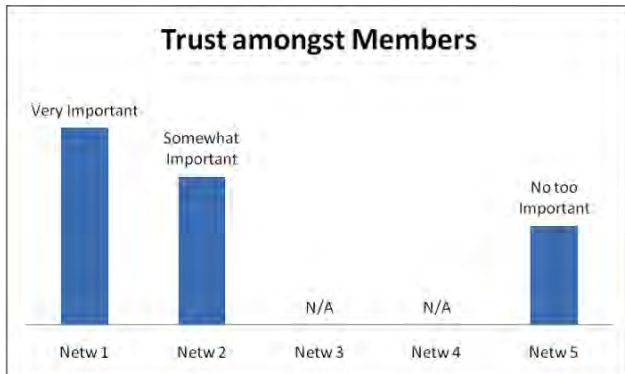
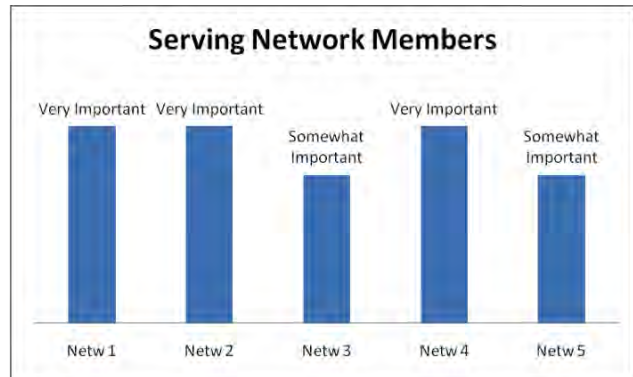
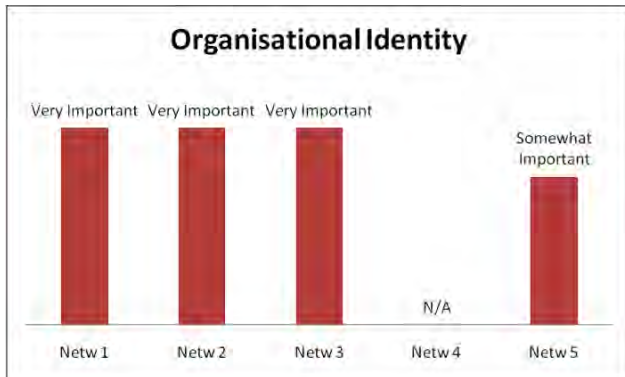
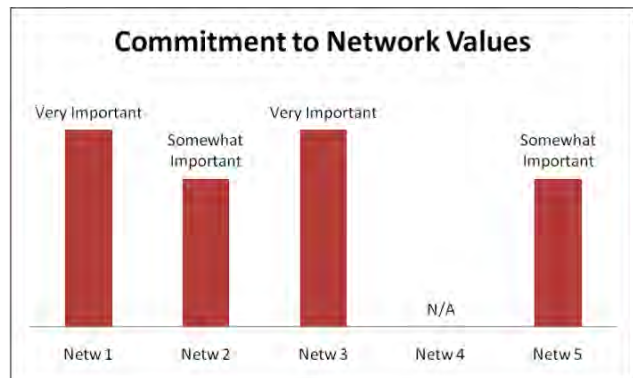
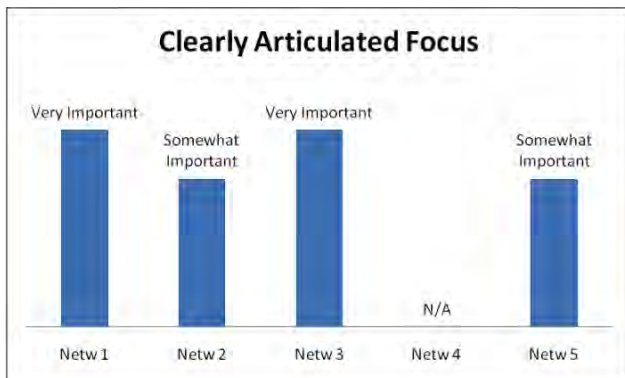
17. Number of volunteers, excluding board members

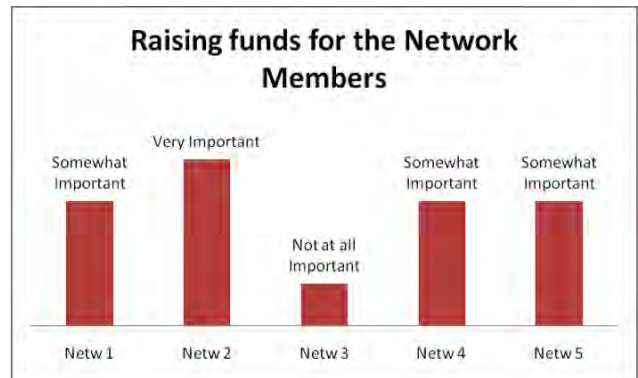
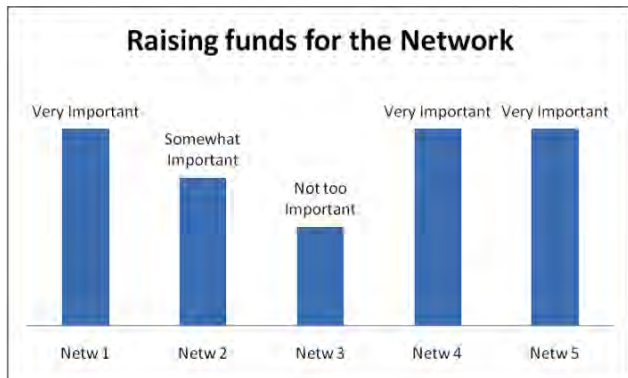
	Netw. 1	Netw. 2	Netw. 3	Netw. 4	Netw. 5
Volunteers	10	120	3	2	20

18. Vision statement review

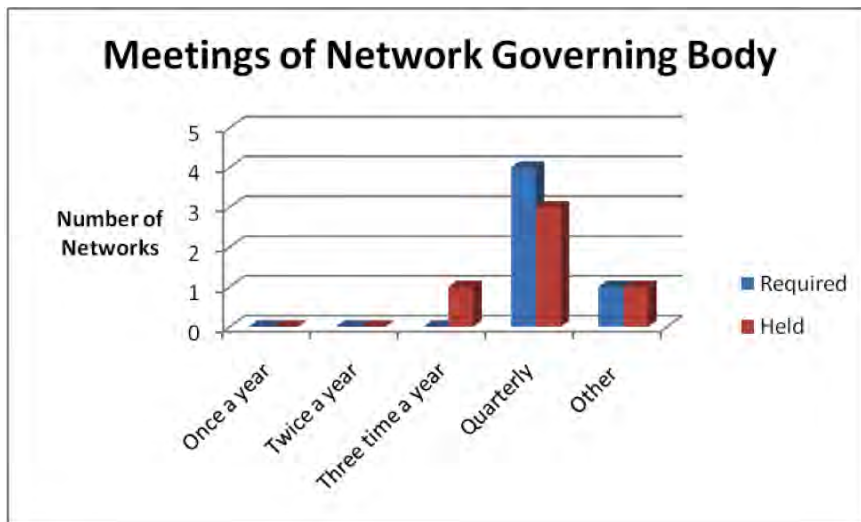


19. Indicate how important the following aspects are within the network





20. Frequency of board meetings specified in the founding document and of meetings held



21. Frequency of network member meetings

Network 1	11 times per annum
Network 2	Twice a year
Network 3	Once a year
Network 4	Every second month
Network 5	Once a year

Appendix 4

STRUCTURED INTERVIEW QUESTIONS

Structured interview questions for national non-profit bodies

1. Governing board and planning

- a. What role has the board played in setting the vision of the organisation?
- b. How involved is the board in the planning of the organisation's activities?
- c. Has there been regular (internal or external) evaluation of the board's performance?

2. Recruitment and orientation

- a. Has it been difficult to recruit new board members?
- b. Explain how board new members are recruited? Who is involved in the process? Is there a plan on how to recruit new board members?
- c. Explain how board members are orientated after recruitment.
- d. When was the last board member recruited?
- e. Are skills audits being done on a regular basis?

3. Organisational policies

- a. What policies does the organisation have in place?
- b. When last were organisational policies reviewed?
- c. Is there general adherence to the policies?

4. Funding

- a. Has the organisation's quest for funding impacted on its ability to do long-term planning?
- b. Does funding provide for the capacity building and development of board members? If so, has it been utilised effectively. Has capacity building brought about any changes within the organisation?
- c. Is the organisation supplementing its income through business activities? If so, provide more information on percentage in relation to total income, the nature thereof and how it has been working.
- d. What role has the board played in fundraising?

5. Board, CEO and staff

- a. Is there a high level of cooperation between the board, CEO & staff? Please explain areas of cooperation.
- b. Does the CEO know what the governing board expects of him/her?
- c. Are staff members clear on what their responsibilities are?
- d. Do staff members receive regular and appropriate skills training?

6. Financial management

- a. Does the organisation have written policies governing internal financial controls. E.g. dealing with cash deposits, payment of accounts and signatory requirements.
- b. Is appropriate information available to staff and the board to allow them to make informed financial decisions?
- c. Do board and staff members receive regular training on financial management?

7. External environment

- a. To what extent has legislation or government policies influenced the work of the organisation?
- b. Has the external environment impacted significantly on the organisation's activities?
If so, please explain.
- c. Has the organisation adopted the King II code of conduct?

8. Any additional comments or recommendations?

Structured interview questions for national networking organisations

1. Network governing body and planning

- a. How involved is the network governing body with setting the vision and planning of the network activities?
- b. Has there been regular (internal or external) evaluation of the network governing body's performance?
- c. Does funding provide for the capacity building and development of network governing body members? If so, has this been utilised effectively. Has capacity building brought about any changes within the network?

2. Organisational policies

- a. Is there general adherence to network policies by the network governing body?

3. Funding

- a. What role has the network governing body played in fundraising?
- b. Has the network's quest for funding impacted on its ability to do long-term planning?
- c. Is the network supplementing its income through business activities? How are these activities contributing towards the sustainability of the network?

4. Networking activities

- a. How is the network adding value to its members and the communities where it operates?
- b. Has the network been successful in promoting:
 - i. A collective identity for the network
 - ii. Mobilising resources for network activities
 - iii. Facilitating participation in network activities
 - iv. Serving network members
 - v. Facilitating communication amongst network members
 - vi. Mobilising technical expertise to support network activities
- c. Has the network experience any of the following tensions and, if so, how did it deal with those tensions?
 - i. The mandate of one organisation versus the mandate of the broader membership.
 - ii. Having a narrow focus versus focusing on a broader range of issues.
 - iii. Having a closed membership versus having a more open network.

5. External environment

- a. To what extent may legislation or government policies have influenced the work of the network?
- b. Has the external environment impacted significantly on the network's activities?
If so, please explain.

6. Any additional comments or recommendations?

Structured interview questions for SARS Tax Exemption Unit

1. How many non-profits are currently approved as Public Benefit Organisations (PBOs) under section 30 of the Income Tax Act?
2. Does your office have any statistics on how many of the approved PBOs are operating at a national level in South Africa?
3. Has your office experienced any problems with approved (national) PBOs not complying with the relevant provisions of the Income Tax Act? If yes, please explain the nature of these problems.
 - a. Was it at all possible to ascertain to what extent these problems relate back to governance practices of an organisation?
 - b. If so, what governance practices would you consider as being related?
4. Did any of the approved PBOs lose their PBO status since the inception of the Tax Exemption Unit for reasons of non-compliance? If yes, how many have lost their PBO status and what were the predominant reasons?
5. Are tax returns from PBOs generally submitted on time? If not, what are the reasons afforded by PBOs?
6. Do tax returns generally reflect that national PBOs are supplementing their income through business activities?
 - a. If yes, do you know what kind of trading activities are predominantly being carried out by approved PBOs?
 - b. Is it possible to ascertain from the tax returns submitted, what percentage of the registered PBOs engage in business activities? If yes, what is the average percentage?
 - c. Is it possible to ascertain from the tax return what percentage of a PBO's income is received through donations and what percentage is generated through business activities? If yes, on average what are the percentages?
7. To what extent have approved PBOs been required to pay taxes when exceeding the trading limitations under section 10 (1) (cN).
8. Do you think that SARS should make financial information of approved PBOs accessible to the broader public? Please motivate.
9. During 2007 the Internal Revenue Service in the USA released non-obligatory governance guidelines for tax exempt organisations with the aim of improving governance practices. See: http://www.irs.gov/pub/irs-tege/governance_practices.pdf . Do you think SARS can play a similar role in promoting appropriate non-profit governance practices within PBOs?

Structured interview questions for National Lotteries Board

1. Do grants made in terms of the Lotteries Act provide for financial support in relation to capacity building activities of governing board members?
 - a. If not, what is the motivation behind this?
 - b. If yes, have applicants requested support for capacity building activities for board members?
 - c. If applicable, has financial support in relation to capacity building for governing boards generally been utilised effectively?
 - d. Do the Lotteries grants provide assistance in any way to applicants should they not comply fully with the criteria for the allocation of funds?
2. Do you think that South African donors should provide financial support that will build the capacity of boards to govern non-profit organisations effectively?
3. Is provision made for short-term grants, long-term grants or both kinds of grants?
 - a. What criteria inform decisions on whether a short-term or long-term grant is made?
4. To what extent is financial support also provided for lobbying and/or advocacy activities of the applicants of lotteries grants?
 - a. If such support is provided, have national organisations and national networking organisations applied for such support from the NLB? If, yes, have any of these applications been successful?
5. Do you think that South African donors should provide financial support for lobbying and advocacy activities of non-profit organisations?
6. Are progress reports from grant recipients generally submitted on time?
 - a. If not, what are the reasons afforded by grant recipients?
 - b. What is the general quality of reports received from grant recipients?
 - c. Has the NLB experienced problems with national organisations not submitting their reports on time? If so, what reasons have been provided?
7. Do funding applications generally reflect that national organisations are supplementing their income through business activities?
8. To what extent is the National Lotteries Board liaising with other governmental departments on determining funding priorities?
9. It is approximately ten years since the enactment of the Lotteries Act:
 - a. Is there a need to revise the funding areas specified in the Lotteries Act?
 - i. If so, please specify your views on potential revisions.
 - b. Has the impact of Lotteries grants been previously assessed internally or independently? If yes, have the results been made available to the public? If no, is there a need to independently assess the impact of grants allocated in terms of the Lotteries Act?
 - c. Is there a need, in your opinion, to review the process of allocation of lotteries funding in terms of the Lotteries Act? Particularly in light of:
 - i. The length of time taken to process applications.
 - ii. The following comments made by the Auditor-General's office:

"The [Lotteries] Act established the National Lotteries Board (NLB) and the National Lotteries Distribution Trust Fund (NLDTF). The accounting authority is ultimately accountable for the funds received and disbursed under its management. Although payments are processed by the NLDTF, such payments are made in accordance with decisions made by distributing agencies (DA's). DA members are appointed by the Minister of Trade and Industry in consultation with the Minister responsible for the relevant sector in which decisions are made. This approval mechanism does not appear to be effective as although the NLDTF administers and assists in the payment of grants made, the accounting authority has no control over the DA's. There are no prescribed governance structures and processes, and oversight mechanisms for the DA's. The appointment of distributing agencies is the responsibility of the department, not the NLB."

Structured interview questions for government officials

1. Are grants made by your institutions providing for financial support in relation to capacity building activities of governing board members?
 - a. If not, what is the motivation behind this?
 - b. If yes, have applicants requested support for capacity building activities for board members?
 - c. If applicable, has financial support in relation to capacity building for governing boards generally been utilised effectively?
 - d. Do your grants provide assistance in any way to applicants should they not comply fully with the criteria for the allocation of funds?
2. Do you think that South African government departments should provide financial support that will build the capacity of boards to govern non-profit organisations effectively?
3. Is provision made for short-term grants, long-term grants or both kinds of grants?
 - a. What criteria inform decisions on whether a short-term or long-term grant is made?
4. To what extent is financial support also provided for the lobbying and/or advocacy activities of the applicants of your grants?
 - a. If such support is provided, have national organisations and national networking organisations applied for such support? If, yes, have any of these applications been successful?
5. Do you think that South African government departments should provide financial support for lobbying and advocacy activities of non-profit organisations?
6. Are progress reports from grant recipients generally submitted on time?
 - a. If not, what are the reasons afforded by grant recipients?
 - b. What is the general quality of reports received from grant recipients?
 - c. Has your organisation experienced problems with national organisations not submitting their reports on time? If so, what reasons have been provided?
7. Do funding applications generally reflect that national organisations are supplementing their income through business activities?
8. To what extent is your institution liaising with other government departments and donor institutions on determining funding priorities?
9. What would you describe as the fundamental components that define the relationship between your Department and the grant recipients?

Structured interview questions for NGO experts

1. What in your opinion are some of the challenges that national networking and non-profit organisations (the target organisations) are experiencing in South Africa today?
2. Do you think that there is sufficient attention given towards improving governance practices within the target organisations by:
 - a. Non-profit organisations
 - b. Donors
 - c. Government
3. Do you think that there is a need for more effective leadership within the target organisations?
4. Do you think that the target organisations have generally adopted effective recruitment strategies to get appropriate people to serve on their boards?
5. Do you think that South African donors should provide financial support to build the capacity of boards to govern non-profit organisations effectively? Motivate your answer.
6. To what extent did South Africa's history prior to 1994, if at all, shape:
 - a. The role played by the target organisations in South Africa today?
 - b. The governance practices within target organisations today?
7. Did any of the following aspects, in your view, have a significant impact on the governance practices of the target organisations:
 - a. The legislative environment in South Africa
 - b. Government policies since 1994
 - c. Local and international donor funding trends
8. Do you think that local donors appreciate the value of supporting the lobbying and/or advocacy activities of non-profits in South Africa?
9. Do you have any further comments on non-profit governance practices, including: concerns, gaps, areas for improvement, etc.

Structured interview questions for donors

1. Are grants made by your institutions providing for financial support in relation to capacity building activities of governing board members?
 - a. If not, what is the motivation behind this?
 - b. If yes, have applicants requested support for capacity building activities for board members?
 - c. If applicable, has financial support in relation to capacity building for governing boards generally been utilised effectively?
 - d. Do your grants provide assistance in any way to applicants should they not comply fully with the criteria for the allocation of funds?
2. Do you think that South African donors should provide financial support that will build the capacity of boards to govern non-profit organisations effectively?
3. Is provision made for short-term grants, long-term grants or both kinds of grants?
 - a. What criteria inform decisions on whether a short-term or long-term grant is made?
4. To what extent is financial support also provided for the lobbying and/or advocacy activities of the applicants of your grants?
 - a. If such support is provided, have national organisations and national networking organisations applied for such support? If, yes, have any of these applications been successful?
5. Do you think that South African donors should provide financial support for lobbying and advocacy activities of non-profit organisations?
6. Are progress reports from grant recipients generally submitted on time?
 - a. If not, what are the reasons afforded by grant recipients?
 - b. What is the general quality of reports received from grant recipients?
 - c. Has your organisation experienced problems with national organisations not submitting their reports on time? If so, what reasons have been provided?
7. Do funding applications generally reflect that national organisations are supplementing their income through business activities?
8. To what extent is your institution liaising with other donor institutions on determining funding priorities?

Appendix 5 PROPOSALS FROM KEY INFORMANTS AND FOCUS GROUPS

Proposals made by key informants

The board and the external environment

- The governing board should be responsive to what is happening outside the organisation and ensure that proper systems are in place to ensure that this happens.
- The practice of the organisation should reflect the needs of society. Good governance should deliver what society needs.
- The board should be mindful of what drives accountability.
- Different perspectives on the board are important, and there should be scope for their expression. Board members should be given the opportunity to provide input on different areas.

Re-establishing independence

- The independence of civil society should be re-established and fearless leadership developed. Civil society should be free of political interference.

The accounting framework

- The accounting framework is a governance issue, yet there is no clear framework for the financial systems of NPOs.
- Generally accepted accounting principles (GAAP) are not suited to the non-profit sector. Those who use the financial statements of NPOs find they do not provide critical information, including a breakdown of where money comes from and how it has been spent.
- Further guidelines should be developed. Comparing different organisations becomes problematic when there is no standard.
- Boards must approve financial statements which their members often do not understand. Audit committees would serve a useful purpose in this regard.

Balancing board skills and accountabilities

- There should be a balance between board members with skills and expertise and those who represent constituencies. The constitution of the organisation could provide that 50 percent of a board is broadly representative, while the balance has governance skills and experience.
- Boards should realise that accountability extends beyond the organisation. The first level of accountability involves the individual's responsibility to him or herself.
- The individual's values should be aligned with the organisation's vision.

The lobbying framework

- Protocols for lobbying should be developed, to explain how to lobby and the standards of behaviour expected of both lobbyists and those being lobbied.

Donor practice

- South African donors should also subscribe to certain funding rules. For example, donations to political parties should be disclosed to the public.
- Foreign organisations operating in South Africa should be required to register in terms of local legislation. Some are only registered abroad.

Defining the essence of the relationship

- It is important to establish the essentials of the relationship between the different stakeholders.
- Parties should investigate the essential ingredients of a successful relationship. What is the bottom line? What do the parties care about? These should be translated into practical guidelines.

Creating support

- The DSD could appoint a panel of individuals to provide ongoing advice on problems of governance.
- The panel could also operate at a provincial level and respond to problems via email.
- The Department should nominally remunerate the panel.

Board development

- Organisations should provide for board development in funding proposals and budgets.
- Such funding should be used effectively. Donors and particularly government should recognise the need to invest in effective boards.
- Some larger donors could make non-monetary contributions, for example, by supporting organisations that aim to improve non-profit governance.
- Board development and capacity-building should move up the donors' agenda.
- The DSD should give more support to board development.
- The South African Qualifications Authority should develop more appropriate unit standards pertaining to board development and promote improved access to training and educational programmes on non-profit governance.

Proposals from focus group meetings

A change of perspective

- The target organisations, donors and beneficiaries should value non-profit boards and view them as strategic assets.
- Boards should want to improve and be open to change. Without this perspective, training and development of board members will have no significant effect.
- Governance becomes a source of frustration if the board only focuses on complying with legislative and fiduciary duties. The focus should be broadened to include strategic matters beneficial to the organisation.

Board skills

- The target organisations should broaden the range of skills represented on their boards beyond legal and financial skills, looking at additional competencies, for example in the programmatic and relational fields.
- Boards should be able to recognise skills shortages and make efforts to redress them.

Board practice and function

- Representing constituencies tends to divert the board's focus from oversight to a managerial role.
- Boards should beware of rubber-stamping the CEO's initiatives, as it is they who are responsible for steering the organisation.
- Boards should themselves initiate board development processes.
- Boards should be aware of, and committed to, their organisation's policies and regard this as a priority.
- Boards should have a diverse composition which translates into effective organisational policies and practice.
- Special attention should always be given to conflicts of interests at board level.
- Founding documents, not just policies, should be regularly reviewed to ensure that the structure of the organisation works to its best advantage.
- Boards should be willing to adapt to the needs of the organisation.
- The target organisations should become more financially independent.

The focus groups identified the following trends which affect the non-profit sector:

- There is limited support for the training of non-profit board members in regard to new legislative developments. Uncertainty about their responsibilities under new legislation could deter potential directors from volunteering their services.
- Some donors seem to appreciate the importance of boards, but are reluctant to foot the bill for making them more effective.

Implications for non-profit boards

Boards should:

- Be aware of prevailing and emerging external trends.
- Be able to assess the impact or potential impact of external trends on the organisation and respond appropriately.
- Respond to such trends in an innovative way.
- Move beyond matters of compliance to interpret and engage with the policy environment.
- Recognise their strategic value to their organisations.

Some general considerations

- The importance of boards means that resources must be allocated for their development. Funding organisations and donors should ensure that they invest in the development and training of boards.
- More attention should be given to the recruitment and availability of board members, implying an active recruitment process. For example, one organisation surveyed received more than 60 applications after advertising for board members through the Institute of Directors.
- New board members should be apprised of the essential elements of good governance.
- Target organisations should consider boards for each provincial structure, with the chairpersons of these serving on the board of the national structure.
- An advisory service on non-profit governance should be developed in South Africa. This could take various forms, including;
 - The establishment of an advisory committee by the DSD to provide advice on matters relating to non-profit governance.
 - The establishment of an NPO solely concerned with advancing non-profit governance, in the mould of BoardSource in the US.
 - The development of an assessment tool for NPOs.
 - The use of existing institutions that focus on non-profit governance to increase knowledge and skills levels.
 - The development of a DSD training programme on board governance.

Appendix 6 MINUTES OF FIRST REFERENCE GROUP MEETING (27 JUNE 2008)

Minutes of the 1st reference group meeting on assessment of structural composition of national bodies

Date: 27th June 2008

Venue: Saint George Hotel

1. Attendees

- 1.1 Social Development:
 - 1.1.1 NPO Directorate
- 1.2 Inyathelo (Service Provider)
- 1.3 Age in Action
- 1.4 ACVV
- 1.5 DPSA
- 1.6 DPSA
- 1.7 Badisa
- 1.8 SANCA National
- 1.9 FAMSA
- 1.10 SAFMH
- 1.11 Child Welfare SA
- 1.12 DEAFSA
- 1.13 NCPPDSA
- 1.14 CORN SA
- 1.15 SACECD
- 1.16 WNC

2. Apologies

The following apologies were submitted:

- 1.1 SACAR
- 1.2 Epilepsy SA
- 1.3 SAVF
- 1.4 SA Happy Families
- 1.5 SANGOCO
- 1/6 Die Ondersteuningsraad

Please find the attendance register attached as Appendix: A

3. Opening, welcome and introduction

Mr. Mapena Bok officially opened the meeting and welcomed everyone present. He further gave all members an opportunity to introduce themselves before introducing and thereby giving a background on the project. He also briefly took the meeting through the agenda, which was to guide the proceedings for the day.

4. Purpose

The purpose of the meeting was to allow the Inyathelo team to present on the project design covering the scope of work, methodology and phases of the project. These included presentations on literature review, sample design and survey instrument. The meeting was further expected to discuss and interrogate the abovementioned issues as presented by the outsourced service provider - Inyathelo.

5. Presentations and deliberations

5.1 The presentation on the background for the study

Mr. Mapena Bok, the Project Owner and NPO Director, provided a thorough presentation on the background that necessitated the study. In his introductory remarks, he indicated to the Reference Group (RG) members that the study was brought about by the need as already expressed by various national bodies in their requests for guidance in so far as their structural composition is concerned. He went further to indicate that part of the reason why the study is being conducted is due to the current structural nature of national bodies, which poses some challenges as already expressed.

Mr. Bok highlighted to the meeting that the NPO Act, administered by the Department of Social Development (DSD), was enacted to inter alia create the NPO Directorate, which is currently responsible for the study under question. Essentially, as he indicated, the Act serves to contribute towards creation of an enabling environment for NPOs to flourish and function effectively, which is the mandate this research study is responding to. The Act further seeks to establish administrative and regulatory framework within which NPOs can conduct their affairs. He also highlighted that the Act encourages NPOs to maintain adequate standards of governance, transparency and accountability.

Mr. Bok informed the meeting of the Codes of Good Practice issued in 2001 with the idea of encouraging NPOs to accept responsibilities and ensuring that they respond to and maintain adequate standards of practice. Further to his introductory presentation, he

highlighted a few challenges around the structural composition of national bodies, wherein he touched on issues of provincial affiliation, representivity and conflict of interest of governance members.

Please find a full presentation attached as Appendix: B

Deliberations on the first presentation

a. What does this research study mean?

Preceding interrogation of Mr. Bok's presentation, there was an expression of gratitude on the project by the members, whose excitement for being part of the project was clearly in the open. A comment was made that when one does research, there's anticipation of a particular outcome. In essence, the meeting was cautioned for reliance on the research findings to find solutions given the dynamism that exist within the sector. A response to the above comment was tabled that, this research seeks to look at how organisations are structured at the moment.

The study will basically collect what is currently available and begin to seek what could be deemed best practice without necessarily altering the status quo. An acknowledgement was made therefore that this research will not necessarily provide solutions but would at least give some guidance in so far as good governance is concerned. The idea is to reveal what is currently existing and not necessarily prescript.

b. How does the NPO Act feature in the process?

A question was raised whether the study is solely about governance or is it in relation to the NPO Act, which fathomed another question about the absoluteness of the Act and whether the sector is comfortable with it. It became clear from members' expressions that albeit regulation is necessary, the Act is in its nature, not fully satisfactory. The meeting was then informed that part of this exercise would look at how the issue of regulation could be addressed. An indication was made that Inyathelo and DSD should be seen as the source to be used to improve the status of the sector where such is needed, particularly considering that there's certain areas where the Act itself cannot reach.

c. Disparities in the structural nature of organisations

A proposition was made that the exercise may also want to look at other organisations that were not present in the meeting who may not be organised as the ones who are already part of this study. The meeting was also

advised to take into consideration the fact that varying organisational structures are a result of circumstances, which become imperative to look at why organisations are as they are.

The meeting was also informed of another study running parallel to this one on national bodies. The study is holistically looking at benchmarking good governance in the sector. It is hoped that the two studies would in the future be combined.

5.1 The presentation on the research approach for the study

Immediately after deliberations on Mr. Bok's presentation, Mr. Wyngaard of Inyathelo took to the front for presentation on how they will as the service provider go about conducting this research. Prior to his presentation, Mr. Wyngaard exploited the opportunity to give a brief overview of Inyathelo as the new organisation to take this assignment forward and further commended DSD for having started the project, which they find exciting. He informed the meeting that they were part of NPC, which sadly closed down whereby staff and projects went to Inyathelo.

The meeting learned from Mr. Wyngaard's brief presentation of Inyathelo that the organisation promotes a culture of giving. The meeting also learned of Inyathelo as a Xhosa word interpreted to mean advancement, which was challenged by the members to have been wrongly interpreted. A correct meaning was given as "taking a stride". Mr. Wyngaard started off his presentation on the study by highlighting difficulties they are encountering given the different models that already exist. He further informed the meeting that they also have a challenge in connecting the different relevant structures and issues. The presentation was made such that members made comments and inputs in between the presentation. The Inyathelo presentation covered issues pertaining to the research processes applied for the study, including the:

- scope of the research,
- approach and methodology,
- project phases,
- literature review,
- sample design and key issues, and
- survey instruments

Regarding the scope of the project, Inyathelo indicated that they will require inputs from the RG members throughout the project. They further informed the meeting that the draft literature review report has been finalised and sent to DSD and RG members. In their presentation, the service provider raised a challenge around distinction between

national bodies and national networking organisation wherein in some instances, members are board members. This point resulted in a question being raised about the criteria of selecting organisations.

Deliberations on the second presentation

a. NPO governance vis-à-vis corporate

The issue of dimension of governance was raised also looking at comparative analysis of corporate organisations and NPOs. A comment was also made on some NGOs modelling themselves like corporatives. An example was made about DPSA, which has got Board members who are also members of the organisation. It was also expressed that more regulation on the NPO sector affects governance. The problem of the King II report not being clear was also raised.

A further question was raised whether the study is only restricted to registered organisations, wherein in response an emphasis was made that you cannot engage an organisation that you do not know. An understanding was reached that the study will focus only on registered organisations.

b. Defining Networking Organisations vis-à-vis National Bodies

Another essential question regarding this study is the one pertaining to the distinction between national bodies and national networking organisations. It was indicated that internationally, most networks are not legal entities. In South Africa, this distinction in terms of international definitions is not applicable, the meeting declared. It was also emphasised that the dynamics around networks is that they are collaborative structures of NPOs coming together for a specific reason. Clarification was then sought on other networks or the way DSD clarifies networks. A comment was made that the issue of a network is an aspect that exists within registered organisations and could therefore be classified under many other existing registered NPOs.

An agreement was reached that research comes with limitations and as such, a decision need to be made on which limitations could be accommodated. The issue of National Welfare Councils was also brought onto the table, whereby emphasis was made by the service provider that, focus only on welfare councils would not have a representative outcome. The meeting was informed that the reason why the terms of reference reflect national bodies

is that the organisations that approached the department presented themselves as national bodies. An input was made that there are organisations regarding themselves as national yet they do not have provincial affiliation. This was taken as one of the disparities that currently exist within the NPO sector.

It was also indicated that national bodies are more service oriented and would even in their nature have networks. A comment was made regarding the definition of national bodies that it cannot be achieved with such a limited sampling. Based on the vastness of the sector we cannot propose a specific model, so it was emphasised. Another concern raised was that the classification of networks as it stand is exclusive. It was proposed that it should be expanded to include all other associations and forums, which are supposed to work together. An example was given that, even the Women's National Coalition have a broader nature. The following criteria were identified for selection of organisations to participate on the study:

- Must be registered
- Must be national bodies
- National networking organisations
- Service delivery nature

Members were requested to send further electronic communication to the service provider in terms of other selection criteria that they may identify. The meeting was advised to take into consideration the NPO sector prior to democracy, whereby the main focus was on fighting the regime of the time, whilst today's NPOs are focusing on service delivery. A caution was tabled that organisations shouldn't be presumed to be networks. As the project continues to unfold, it will emerge whether an organisation is a network or not.

c. Draft literature review

As literature was being presented, organisations began to identify some commonalities in what was being presented. A view was expressed that the issue of funding need to be also roped into the research study. Another issue raised was in relation to PFMA, which places more responsibility in terms of accountability. The following country selection was made:

- National Bodies: *Canada, USA, Australia and Mozambique*. A question was raised on the above selection regarding the exclusion of Asia, wherein the response was that it was not relevant to the research focus.
- National Networks: *Brazil, Canada, Malawi, India*.

d. The Survey Document

The national survey document will serve as a self-administered document and members were requested to have a look at the survey instrument and submit inputs. The meeting was informed that the questionnaires will be expanded further, with contributions from the RG members encouraged. Another contribution on the survey instrument was that Health Professionals need to be included under section N. The person to fill the form must be preferably those listed and not limit it but perhaps extend it to those with organisational memory.

Another issue that was looked at is that of a legal entity, i.e. staff employed by the legal entity. Note was taken that as it has been observed, other organisations have got one NPO number, whereas other organisations give different NPO numbers to provincial affiliates. Some were identified to be one entity but funded separately since they have varying focus in different provinces. Some organisation would identify themselves as national simply because they have affiliates, e.g. an organisation based in Gauteng that may have affiliates around the country, while still others would be a one man show who is relating with several others as affiliates. An emphasis was made that the study should be meant for all these issues to surface. Mr. Wyngaard informed the meeting that the questionnaires will be sent to the RG members for input also bearing in mind that we deal with two different types of organisations.

6. Conclusion

In closing, Mr. Wyngaard thanked everyone for having made it to the meeting and wished all safe trips back home. A view was expressed on that note for the RG meeting schedules as submitted to organisations during the departmental visits to be maintained, as the dates have already been diarised.

7. Resolutions and action points

The following were the resolutions of the meeting:

- The questionnaires to be sent on Monday, 30th June 2008 and responses received within seven days
- The study will focus only on registered organisation
- All comments on literature review to be received at least by 22nd August 2008 (Next RG meeting)

8. Date of next meeting

The next meeting was scheduled for the 22nd August 2008. Members of the Reference Group were assured that they will be contacted in due course regarding the logistical arrangements for the next meeting.

GOVERNANCE PRACTICES OF
NATIONAL NON-PROFIT BODIES AND
NATIONAL NETWORKING ORGANISATIONS

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Inyathelo – The South African Institute for Advancement
2nd Floor, Fairweather House
176 Sir Lowry Road, Woodstock
Cape Town, South Africa
Tel: +27 21 465 6981
Fax: +27 21 465 6953
www.inyathelo.co.za

Researched and drafted by Ricardo Wyngaard and Peter Hendricks
Written by Gabrielle Ritchie and Melanie Judge
Concept design and layout by Scan Shop www.scanshop.co.za