

RESEARCH REPORT ON THE NATIONAL DEVELOPMENT AGENCY

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Executive Summary

The history and the establishment of the National Development Agency (NDA) have been punctuated by delays, anxiety and panic that have threatened the financial sustainability of many civil society organisations (CSOs). The first chapter of this Report casts doubt on whether the NDA learned lessons from its predecessor, the Transitional National Development Trust (TNDDT). It further reveals that the NDA's location in relation to government is still uncertain and that its structural relations have not been fully conceptualised. It goes on to say that the Government's dishonouring of its commitment to make gradual increases in allocations, the lack of continuity, the absence of institutional memory and the shortage of expertise and shared experience have all had an adverse effect on the work of the NDA.

Chapter two argues for the amendment of the *National Development Agency Act* so that the NDA is obliged to account to the non-profit sector and the public at large. Further, the amendments should provide for additional monitoring of the NDA to ensure that it adheres to its mandate. The Act should provide for appeal procedures against NDA decisions and all legislation affecting the non-profit sector should be aligned and made coherent.

Chapter three demonstrates that the NDA has narrowed its focus and has not disbursed the funds and support that could have been disbursed. Further, the NDA has ignored section 3(1)(b) of the *NDA Act* by not working with other NGOs and grantmakers as intermediaries. Instead, it has opted for decentralisation and has been working with community based organisations (CBOs) that it regards as being involved in direct service of communities.

Chapter four argues that in its orientation and expressed preferences, the NDA appears to be drifting away from civil society towards government. By embracing the government's market-oriented policies, the NDA, runs the risk of perpetuating rather than combating poverty.

Chapter five synthesizes all the sub-arguments of the Report in a list of recommendations. The report finds that the NDA has not been able to implement its mandate in its entirety. It is also argued that government cannot fight and eradicate poverty effectively without the partnership of civil society. What is needed is a strong agency that facilitates maximum effectiveness of the combined resources of government and civil society. The Report recommends more commitment from government, closer monitoring of the NDA and amendment of the *NDA Act* to increase accountability to civil society. Civil society also needs to organise itself into adequate representative structures. Finally, a thorough and further investigation of all these issues is necessary to indicate exactly how the structural relations between government, the NDA and civil society can best be established for the urgent eradication of poverty.

Terms of Reference

In terms of the letter of agreement between the Centre for Civil Society (CCS) at the University of Natal and the Education Policy Unit (EPU) at the University of the Witwatersrand, the EPU undertook to conduct a research project about the National Development Agency (NDA) that would:

1. Outline the history and establishment of the NDA;

2. Investigate whether the *NDA Act* and related legislation offer the NDA an optimum environment in which to function;
3. Recommend changes to the legislation if necessary;
4. Examine the relationship between the NDA and the non-profit sector; and
5. Draw conclusions from the above about the performance of the NDA thus far.

The two parties also agreed that the research project would be conducted in consultation with the Non-Profit Partnership. A draft report was to be submitted to the CCS by 16 June 2002, and the final report by the 30 June 2002.

Limitations

This study was limited by time constraints. The CCS expected the report to be completed in 10 working days, thus the study was not as comprehensive as it should have been. The study was also limited by the lack of response from some of the participants that were earmarked. For example, the Ministry of Social Development, Public Enterprises, the chairperson of the NDA board and a board member who had recently resigned and the European Union (EU) did not respond to questions sent to them, neither were the researchers able to arrange interviews with them. Efforts to get perspectives from government were also not successful. Neither Minister Jeff Radebe (one of the originators of the NDA) nor Minister Zola Skweyiya (in whose Department the NDA is now located) responded to faxed and e-mailed questions and requests for interviews.

Introduction

The challenge of fighting and eradicating poverty in South Africa and the rest of the continent does not lie solely with governments. It is also the responsibility of the communities, civil society and international agencies. Governments need to support civil society and non-government organizations (NGOs) and be responsive to their needs and civil society and NGOs should be accountable to the people they serve. The government has the advantage of having considerable financial muscle, especially through public revenue, whereas civil society has the advantage of proximity and a better understanding of the needs of the people on the ground.

This Report attempts to examine how an institution like the NDA, which was established to meet the short-term needs of NGOs in development and the long-term need to promote partnership between government and these organisations, is assisting in creating favourable conditions for the sustainability of the non-profit sector and to what extent the legislative framework appears to have enabled or hindered the NDA in the execution of its mandate.

The first chapter provides a brief outline of the history and establishment of the NDA. The second chapter reviews legislation that has implications for the non-profit sector and the degree to which it impedes and /or encourages the establishment of favourable conditions for the sector. Special focus is placed upon the *NDA Act* and the extent to which it hinders or enables the NDA to carry out its mandate. Chapters three and four attempt to explore the relations between the NDA and the non-profit sector. The last chapter synthesises what has emerged from this investigation and offers recommendations for the future.

Chapter 1: The History and Establishment of the NDA

The first section of this chapter traces the developments in civil society before and after the 1994 election that led to the establishment of the TNDD. The second section outlines some of the steps that were taken by government and civil society to establish a long-term institution that, amongst other things, would co-ordinate the funding of CSOs and establish a sustainable partnership between government and these organisations. In this chapter it is argued that the transition period following the elections had a negative effect on the financial sustainability of civil society. In addition, the transition from the TNDD to the NDA was characterised by delays and created anxiety and panic among CSOs. Doubt is also cast on whether the NDA has learned the necessary lessons from its predecessor.

Early History

The history of the NDA may be traced back to the role of NGOs or CSOs in South African society. Prior to 1994, the CSOs involved in development played a central role in providing services to communities who were officially denied resources by the apartheid government. Many CSOs aligned to the Mass Democratic Movement were able to access funds from international donors for development projects.

From 1994, the donors shifted their focus to government and bilateral aid and in this changing context CSOs found it difficult to access funds. Increasingly, NGOs and CBOs had to compete for access to scarce resources and many of them struggled to adjust to the changes in the funding environment. In the former homelands, particularly, there were differing dispensations for fundraising and work by non-profit organisations (NPOs), often leading to the creation of an environment hostile to their work. As a result, many organisations either closed down or failed to develop capacity or achieve sustainability in the areas where they were most needed.

In 1990, the National Party government established the Independent Development Trust (IDT) as a funding institution for the CSOs. Its purpose was to address the development backlogs in black communities and amongst its priority sectors were education and training, health, rural development and urban development. By the end of 1996, the IDT had paid out R2.4 billion in project funding. However, because the IDT had been established by the National Party government it did not have much credibility among CSOs involved in development. This necessitated a new funding mechanism for the CSOs.

According to a South African government Report on Poverty and Inequality in South Africa (1998), the NGOs and CBOs have successfully achieved development goals and have advantages over government as delivery mechanisms in that they:

- usually have better information about conditions at local level, have good contacts, and have built reputations and relationships of trust over time;
- are able to respond quickly to problems on the ground and adapt to changing needs;
- have smaller bureaucracies and tend to be more accountable, thereby minimising corruption;
- are able to identify the poor and target assistance to them, especially those not reached by the private or public sector;
- play a watchdog role in society;
- tend to be versatile and able to provide creative solutions to problems;

- are able to provide basic services at a relatively lower cost, having made use of voluntary or unpaid labour and local knowledge and resources;
- foster community solidarity and ethos.

However, according to the same report, these NGOs also have a number of weaknesses:

- Owing to their size they are not usually able to undertake large-scale or complex projects;
- Their administrative capacity is often weak;
- They lack resources and are thus not able to scale their activities up to a regional or national level;
- They tend to have an urban bias and hence neglect the rural poor.

It became clear to government that because poverty and inequality are multi-dimensional phenomena, remedial strategies would require effective co-ordination, integration and regulation of policies along sectoral and vertical lines. The report recommended that a dedicated mechanism for co-ordinating poverty-related policies be set up. It also questioned whether, apart from the Cabinet and Parliamentary processes (including their sub-committees), there were any other mechanisms to ensure proper co-ordination of social sector policies or sub-sets thereof to improve synergy among them.

The Reconstruction and Development Programme (RDP) identified the need for a framework guiding the relationship between government and CSOs in order to involve CSOs in development initiatives. The newly elected Cabinet made this a priority when it took office in 1994. The Office of the RDP was assigned the task of looking at how a relationship could be fostered between government and CSOs. Two complementary steps were decided upon at that stage:

1. to establish an agency to respond to the immediate needs of NGOs involved in development;
2. to look at setting up a longer-term institution to co-ordinate the funding of CSOs and promote a sustainable partnership between government and these organisations.

The first step resulted in the establishment of the TNDT in October 1995 and the second step resulted in the establishment of the Advisory Committee in 1996 under the chairmanship of Deputy Minister of Trade and industry, Phumzile Mlambo-Ngcuka.

The TNDT was formally registered in April 1996. Its original mandate was to alleviate the financial crisis facing many CSOs during the transitional period and support those organisations whose activities contributed to the objectives of RDP policy. This was understood as a mandate to provide emergency funding to progressive service organisations that were in crisis. The TNDT was given a two-year life span, ending in October 1998.

The TNDT Board included representatives of the major CSO funding institutions (the IDT and Kagiso Trust), the NGO Coalition and the National Economic Development and Labour Council (NEDLAC). The TNDT was capitalised with R50 million from the South African government and R70.1 million from the EU. It was reported that the Board, which made decisions about who would receive funding, initially experienced tensions and conflicts of interest because it included representatives of organisations or constituencies that were

applying for such funds. This form of representation was not just viewed as being fundamentally flawed but as a complete disaster (<http://www.tndt.org/case2.thm>).

The Advisory Committee was originally intended to make recommendations for a permanent body and its functions. However, both of these processes were moved to the Office of the Deputy President because of the reshuffling of Cabinet and the closing of the RDP office.

Establishment of the NDA

The first concrete steps that led to the establishment of the NDA can be linked to a report of the Advisory Committee entitled *Structural Relations Between Government and Civil Society Organisations*, which was presented to the Office of the Deputy President in February 1997. The committee's recommendations included that:

- a statutory body dedicated to grant making, called the National Development Agency (NDA), be established;
- the IDT be reconstituted to work in a facilitation role with government;
- a significant lead-time be given to the establishment of the NDA to facilitate its enactment and its institutional and infrastructural development;
- all systems should be in place for the NDA before it opened its doors to the public;
- the Board and the Executive Officer should be appointed by the end of January 1998;
- the institution should be in place by the end of July 1998.

Cabinet approved all the the committee's recommendations and a Ministerial Committee chaired by Deputy Minister Mlambo-Ngcuka was formed to set up the process that would establish the NDA and deal with the transformation issues of the IDT. Two committees were established:

1. *The Implementation Committee* was responsible for conceptual development and matching implementation with the original vision. It was chaired by Deputy Minister Mlambo-Ngcuka and included members with expertise in development, grant making and international donors. It was supported by the Director of Programmes and Projects in the Office of the Deputy President, Sibongile Mkhabela, who functioned as its Executive Officer.
2. *The Ministerial Committee* was seen as the custodian of government interests in the process and provided political-level support, intervention and guidance. Chaired by Deputy Minister Mlambo-Ngcuka, it included Ministers from Welfare and Population Development, Public Works, Water Affairs, Finance and the Office of the Deputy President.

The Implementation Committee was unable to complete its work by the end of 1997 due to parliamentary delays in considering the NDA legislation. The Implementation Committee, through a consultative process and specialist input, developed the Bill. Government departments that were consulted included Land Affairs, Agriculture, Education, Finance, Home Affairs, Public Works, Water Affairs and Forestry, Welfare and Population Development and Health. CSOs that were involved in the Stakeholder Forum included the South African National NGO Coalition (SANGOCO), CBO Networks (Northern Cape and

KwaZulu-Natal), the NEDLAC Development Chamber, the South African Council of Churches (SACC), the TNDT, the South African National Civic Organisation (SANCO), the National Welfare Social Development Forum, IDT and Kagiso Trust.

The NDA Bill's broad objectives were to contribute to the eradication of poverty and its causes by granting funds, promoting debate and dialogue and undertaking research that would provide the basis for development policy. The Bill proposed that the NDA operate through a Board consisting of six government representatives and nine members representing CSOs. The Board would be reconstituted after three years. The Bill further provided for the establishment of a management committee and the appointment of the chief executive officer and other personnel to ensure effective functioning of the NDA.

The Cabinet transferred four main responsibilities to the Ministry of Finance. These were:

- processing the NDA Bill in Parliament;
- appointing the Board;
- administering the NDA Bill on approval by Parliament;
- overseeing the winding down of the TNDT administration and the transfer to the NDA.

The Implementation Committee concluded that the NDA required the following from the fiscus in order to perform its mandate and these figures were inserted into the government's multi-year budgeting process:

Year 1:	R50m
Year 2:	R165m
Year 3:	R265m

The final establishment of the NDA was delayed by almost 21 months. These delays created uncertainty and fears of a funding gap among CSOs, many of whom associated this period with the funding crisis they had experienced between 1993 and 1994. From 1996, the TNDT turned down funding applications, as it did not have any funds to disburse. According to SANGOCO this resulted in 'a gaping development hole', which was supposed to be filled by the NDA. The government then took a decision to extend the TNDT's mandate so that there would be no breaks in funding for NGOs.

Some key actions that were undertaken in the implementation phase included:

- the organisational design of the NDA;
- the study into the use of intermediary grant-makers as part of NDA disbursement strategy;
- the final report of the Finance and Fundraising Team of the NDA Implementation Committee;
- financial projections of the NDA;
- rapid appraisal of the TNDT;
- workplan for the phasing in of the NDA and phasing out of the TNDT.

The National Assembly finally passed the NDA Bill on 9th November 1998 and on 18 August 1999, the Minister of Finance, Trevor Manuel announced the NDA Board. The process of

transition from the TNDT effectively started in September 1999 and was completed in April 2000. The NDA's administration and power of function, entrusted to the Ministry of Finance, was transferred to the Ministry of Social Development with effect from the 19th October 2001.

Based on the above outline and on opinions of the participants a number of observations can be made.

In the first place, it is and must always be in the government's interest to support the non-profit sector. According to the *Swilling Report* (2002), in 1998 South African NPOs accounted for R9.3 billion in expenditures and 645 317 full-time equivalent staff, a larger workforce than South Africa's mining industry or national government employees. Thus the non-profit sector is a major economic force in South Africa and government cannot fight poverty without the involvement of this sector. Any crisis it faces must also be of concern to the government.

Secondly, it seems that the NDA's ideal location and structural arrangements and relations have not been fully conceptualised. In the process of its establishment, the NDA was moved from the President's Office to the Ministry of Finance and is now with the Ministry of Social Development. According to Griffiths Zabala, consultant to the NDA and an influential figure in civil society structures, the location of the NDA in any individual Ministry makes it vulnerable to the personal whims of Ministers, whereas location in the President's Office would not expose it to such fluctuations.

On the other hand, Edgar Pieterse, a consultant in the CSO field, thought that the move to the Ministry of Social Development might be an attempt to achieve better co-ordination of the government's poverty alleviation programmes. Delani Mthembu, acting CEO of the NDA, feels that there is no ideal location for the NDA since it cuts across all Ministries. He believes that the move to the Department of Social Development was technically correct because that department deals with a range of elements related to social development so the NDA is in a relatively better position than when it was in the Treasury. In addition, Grant-makers, at a workshop with the Non-Profit Partnership, suggested that the shift from the Treasury to Social Development was a 'conceptual' and 'market-oriented' shift, which could affect priorities and therefore how and why funds would be allocated.

Thirdly, the lack of continuity, institutional memory, system-level expertise and shared experience may have affected the initial work of the NDA. According to Mthembu, the politics in the Cabinet also compromised the NDA. It was established under the auspices of a Presidential Committee consisting of Radebe, Ngcuka, Didiza and others, but none of these people had been given the opportunity to become custodians of the NDA, although they knew more than any other Cabinet Minister about these issues. He lamented the fact that they did not stay with the NDA longer in order to ensure that it was infused with those earlier ideals and that they were tested.

According to Pieterse, in the early stages the NDA Board wanted to create a distance between itself and the TNDT. He said it was possible that the NDA Board misunderstood the dissatisfaction of the people with regard to the TNDT; they did not want to be tainted with perceptions that existed about the TNDT; and they did not want to create an expectation that people working for the TNDT would automatically get senior management positions in the NDA. In his opinion this was a 'fatal error'. He said that though the TNDT had had a rocky start, towards the end of its term it had really started to get a handle on quality grant-making;

it had been able to reach vulnerable or marginalised groups; it had institutional memory and system-level expertise and a strong management team. That, Pieterse said, was lost in the establishment of the NDA as a distinct entity.

Fourthly, given the broad mandate entrusted to the NDA, it seems that the initial and subsequent allocations, especially from government, were far from sufficient. According to Zabala the NDA cannot effectively achieve anything with the amount currently allocated and the budget that is routinely given to other departments for poverty alleviation is much larger than the one given to the NDA. Cassiem Khan, Project Officer in the NDA, takes this further and argues that the poverty eradication budgets of government departments call the existence of the NDA into question unless the NDA plays a strategic role to assist agencies to spend that money.

This view was also expressed at the workshop with Grantmakers, where it was felt that government should take the NDA more seriously by increasing its allocation. Frank Mentjies, a long-standing member of the NGO sector, added that in his view the government is not giving enough resources and its commitment to making a gradual increase in its allocation to the NDA on a yearly basis has not been honoured.

SANGOCO was of the opinion that if Government was serious about reversing the legacy of apartheid and about civil society participation in development, it should at least match the figure given by the apartheid government when the IDT was established. According to SANGOCO this amount was to the tune of R2 billion. SANGOCO suggested that annual allocations should not drop below R1 billion if government wants to eradicate poverty and empower NGOs and CBOs to participate in development.

Government meanwhile allocated R100 million in 1999; R90 million in 2000; R92 million in 2001 and R96 million for 2002.

Chapter 2: The NDA and Legislation

The critical question in this chapter is to what extent the *NDA Act* and related legislation offer the NDA an optimum environment and context in which to function and a conducive atmosphere for the non-profit sector to thrive. The first part of the chapter focuses on the *NDA Act* and the second refers to other, related legislation. It argues for amendments to the *Act* that will enable public participation in and scrutiny of the activities of the NDA. It also suggests that some sections of the related legislation should be aligned and amended so as to ease the complicated and cumbersome processes that new, small and less capacitated NPOs are compelled to follow.

The National Development Agency Act

Participants in the research have voiced both complimentary and critical views on various aspects of the *NDA Act*. Some have commented on the text, others restricted their views to the NDA Board and its administration, and others have reflected on both.

There seems to be consensus amongst all the participants that the NDA has not been able to carry out its entire mandate as contained in the objects of the Act. According to section 3 of the Act, the primary object of the NDA is to contribute to the eradication of poverty and its causes by granting funds to CSOs for the purposes of:

- carrying out projects or programmes aimed at meeting development needs of poor communities; and
- strengthening the institutional capacity of other CSOs involved indirect service provision to poor communities.

The secondary objects are to:

- promote consultation, dialogue, debate and sharing of development experiences between CSOs and relevant organs of state; and
- undertake research and publication aimed at providing the basis for development policy.

According to Zabala, in its first two years the NDA did not do anything other than give out money so research, policy dialogue and capacity building were heavily compromised. Abie Dithlake, SANGOCO's Executive Director, also felt that the NDA has not carried out its mandate in terms of the legislation for reasons that he preferred not to come out with. The NDA's acting CEO, Delani Mthembu, confirmed that the NDA has not had the opportunity to fulfil all the aspects of its mandate. He said that policy and research required time and the NDA had not fully explored either. He also said that because strengthening the institutional capacity of civil society is such a huge task, the NDA cannot undertake it alone.

It is worth mentioning that the NDA is intending to move away from its pre-occupation with disbursing funds towards playing a bigger, broader role. In terms of the 2002 Board Strategy (section 9.7- 9.8), the NDA recognises that 'poverty is more than a lack of income' and that it should therefore adopt a balanced approach in development intervention.

The Board's new strategic framework sharpens the focus of the NDA and plays down the funding role. For example, of the 38 activities for the NDA within the seven goals identified by the Board Strategy, only two (less than 5,5%) are directly to do with funding. Instead, 26%

of the activities refer to identifying needs, information, poverty pockets, suitable projects and organisations, programmes and service providers, donor partners, policies and strategic issues. The collation and distribution of data is accorded 21% and the monitoring function is accorded 15% of NDA activities.

This does not necessarily mean that the NDA has now freed itself from the grip of fund disbursement or that it will distribute its resources, time and attention in these proportions. It does, however, indicate that the Board has begun to see that the NDA has a bigger, more complex and more responsible role to play in the eradication of poverty than distributing money. Time will tell, because most of the earlier constructive resolutions that were taken by the NDA Board at its Strategic Workshop in May 2000 were not implemented.

According to section 4.1(d) of the Act, one of the duties and powers of the NDA is to create and maintain a database of CSOs, including, but not limited to the scope and subject matter of their work and their geographical distribution, and also to share the information in that database with relevant organs of state and other stakeholders. Zabala said that he was not sure if the NDA had created and maintained a database. He further commented that the NDA website was not 'useful'. When asked about the database, Mthembu said it was a top priority for this year [2002] and that because it is regarded as a national resource it will be made accessible to all stakeholders.

According to Meintjies, only when all the dimensions of the NDA mandate have been fully implemented will it be possible to evaluate the success of this piece of legislation. Neither Zabala nor Pieterse suggested any changes to the Act. Pieterse thought the legislation was straightforward. He emphasised that the problem is an operational one and that there are difficulties with the functioning of the NDA Board. According to him, the Board struggles with policy issues, it is often unable to get a quorum at its meetings and it tends to move from crisis to crisis. He believes that the grant-making capacity should tie in with an understanding of development programming and an analysis of how poverty is reproduced. He said that the systems of the NDA did not incorporate such analysis as the Board members were not able to make or implement such an approach to poverty eradication.

According to the *Mail & Guardian* (19/04/2002), an accounting firm Ngubani & Co had identified nine areas of chronic mismanagement in the NDA. Part of its findings were that some of the contracts between the NDA and organisations that it was funding were unsigned or had simply gone missing, disbursement records were not up to date and the agency was continuing to pour money into projects that did not meet its own funding criteria.

Zabala said that the NDA Board needs to be given time to implement, especially its recent Board Strategy. The Strategy is an attempt by the organisation to review itself and to make its policies action-oriented. He also predicted that if the NDA does not perform over the next two years, the government may consider scrapping it and he felt that this would be a great loss to civil society.

Meintjies mentioned that there are infrastructural and capacity problems within the NDA. He was not sure if the Act had effectively structured the relations between the NDA and other government departments or not. He was also not convinced that the Act had been able to link poverty reduction to issues of human rights and democracy.

According to Mthembu, the context in which the *NDA Act* was passed may have changed. He felt it was too prescriptive, with specific reference to the Ministry of Finance, and that it should be flexible and adaptable to changing conditions. He sees the executive authority as representing Cabinet and emphasised that the spirit of the NDA as 'cutting across Ministries' needs to be clarified by the Act. He argued that at present the NDA might be used for 'single-handed agendas [in government] that are not national and integrated'.

Mthembu made specific reference to the composition of the NDA's Board. In terms of section 5.1 of the Act, the Board should consist of six members representing the government and nine members representing CSOs. Mthembu's argument is that whilst the process of appointing the nine members is clearly stipulated, the selection process for the six government representatives is not explained. He felt that the Act should stipulate that the six members must represent Government as a whole and not a particular Ministry. He argued further that once the two sets of members have been appointed they need to become one Board and not function as two in one. Pieterse expressed similar thoughts when he said that the Board members related to one another on the basis of the camps they belonged to. This created a climate in which there was no meaningful debate and this had adversely affected the core business of the Board.

Ricardo Wyngaard (Legal Resources Centre), thought that at least five changes should be made to the NDA Act. Firstly, according to section 11 of the Act the Auditor-General must audit the financial statements of the NDA and the NDA must table a report on its activities in Parliament within three months after the end of that financial year. Wyngaard proposed that this section should be amended to allow for a public reporting process. He suggested that these reports should be published in the Government Gazette and national newspapers.

He made a similar proposal for public access and scrutiny with regard to section 10.3 of the Act, in terms which the NDA must, in each financial year at such time as the Minister determines, submit for approval a business plan for the NDA and a statement of the NDA's estimated income and expenditure. Wyngaard is of the opinion that this section should be amended so that the NDA business plans are also made available to the public. This would mean both government and public approval of the NDA's actions. According to the report of the Auditor-General, the Minister did not approve the NDA's budget and business plan for 2000 submitted in February 2000, until 31 March 2001, 13 months later. This implies that all expenditure incurred and financial commitments made by the NDA during that period were irregular. What would public opinion of such conduct be?

Wyngaard also said that according to Section 4.2 (a), the NDA may grant money from its funds in accordance with such criteria and procedures as the NDA determines and with due regard to the NDA's primary object in section 3(1), to any civil society organisation for any project or programme that organisation intends to undertake or is undertaking. He suggested that provision should be made for a public process to determine the funding criteria by which the NDA selects eligible organisations. Further, he said there is no need for the criteria to be stipulated in the Act itself. Instead, regulations can be issued that should be accompanied by a public participation process.

He also pointed out that the Act does not include a procedure whereby CSOs can appeal against decisions taken by the NDA. He suggested that the Act should create the space for such appeals to be made. He also suggested that there should be a provision in the Act to compel the NDA to respond to applications for support within a specified time period.

According to Khan, capturing the insights and experiences of the NPOs and the sector as a whole, both at policy and practical levels, is of central importance to understanding the sector, designing funding policies and monitoring success. He doubts whether the Act allows the NDA to do this.

In the workshop with grant-makers, the general view was that there are no mechanisms in the Act to make the NDA accessible and accountable to civil society and ensure that the NDA complies with the Act.

Related Legislation

Most of the participants pointed to other pieces of legislation besides the *NDA Act* that have a direct or indirect bearing on the sustainability of CBOs, NGOs and civil society. These are: *The Non-profit Organisations Act No. 71 of 1997*, the *Public Finance Management Act No. 29 of 1999*, the *Administration of Justice Act*, the *Labour Relations' Council*, the *Employment Equity Act No. 55 of 1998*, the *Lotteries Act No. 57 of 1997*, the *Companies Act* and the *Tender Procedure Regulations*.

The main objective of the *Non-profit Organisations Act* is to encourage and support NPOs in their efforts to meet the diverse needs of the population, amongst other things, by creating an environment in which NPOs can flourish; and encouraging NPOs to maintain adequate standards of governance, transparency and accountability and improve those standards (section 2).

In terms of section 7 of the *NPO Act*, the Minister must, within six months after the end of each financial year, table a written narrative and financial report on the activities of the Directorate for the previous financial year in Parliament. Wyngaard suggested that section 7 of the *NPO Act* should be amended to allow a public reporting process where such reports are published in the Government Gazette and national newspapers.

In Zabala's opinion, the *NPO Act* is a 'useless' piece of legislation and Mthembu adds that the implementation and impact of the Act have never been clear. This criticism is linked to what Honey (Legal Resources Centre) calls the 'carrot rather than a stick approach' that the Act has adopted in that although the Minister may prescribe benefits and allowances only to registered NPOs, the registration of NPOs seems to be voluntary.

According to the *NDA Annual Report (2000/2001, p.9)*, the NDA is listed as a schedule 3 public entity of the *Public Finance Management Act (PFMA)*. This means that the NDA is a national public entity similar to the Commission for Conciliation, Mediation & Arbitration (CCMA), the Legal Aid Board (LAB), the National Housing Board (NHB), the South African Bureau of Standards (SABS), etc. The object of the Act (section 1) is to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which the *PFMA* applies. According to section 55 (1)(c)(i) of the *PFMA*, the NDA is required to submit financial statements to the Auditor-General within two months (by 31 May) after the end of the financial year. However, corrected financial statements were resubmitted for audit purposes on the 24 January 2002, after almost 8 months. The report of the Auditor-General considered that to be a late submission and technically in non-compliance with the requirements of the *PFMA*.

Grant-makers felt there was a need for coherence and alignment in legislation pertaining to the non-profit sector, for examples the *Nonprofit Organisations Act*, the *Public Finance Management Act*, the *Administration of Justice Act*, the *Tender Procedure Regulations*, the *Companies Act* and the *NDA Act*, as well as legislation governing statutory bodies related to civil society.

The Non-Profit Partnership representatives felt particularly strongly that the laws and regulations continue to complicate and hinder the access of NPOs to funding and support. An example of this can be found in Section 4(4) of the *NDA Act*, which requires that any civil society organisation to which a grant is made by the NDA, has to submit to the NDA:

- audited financial statements regarding the use of the grant;
- an analysis of every project or programme in respect of which that grant is made and a description of all other activities of the organisation; and
- an audited financial report.

Even with the *proviso* in Subsection (5) that the organisations be given sufficient funds to cover the cost of complying with subsection (4), this reporting and accounting requirement appears to be far too heavy-handed and cumbersome for thousands of NPOs. This is one area where the *NDA Act* should be consistent. It does not require NPOs to register with the *NPO Act*, thus making access to its funds easier; it should thus make reporting easier to do. Notice too, how much of the legislation emphasises financial reporting rather than the qualitative aspects of the work of NPOs.

Mthembu felt that the *Labour Relations Act* and the *Employment Equity Act*, as well as legislation related to the Skills Fund should be reconsidered. Although this legislation – some of which is being amended constantly – affects people in the non-profit sector, their interests are not taken into account when changes to the laws are being debated.

Mthembu strongly expressed the need to bring all amendments, changes, implications and opportunities in this legislation together so that law-makers are informed by and made more sensitive to the needs of workers in, and people affected by the non-profit sector. This would enable people in remote areas and the poor and to take advantage of possibilities, such as those created by the Skills Fund. He said that because the full implications of legislation are never clear when that legislation is introduced and amended there is a need for NPOs to address this together with the NDA. –Though such work would take time and energy, it would contribute to stabilising and strengthening the sector. One caveat, though. The promotion of amendments to individual pieces of legislation should not be delayed until the process of gathering all relevant data is complete. Both initiatives should run parallel.

Griffiths Zabala argued that the *Public Finance Management Act* is merely a description of good governance and common business practice that serves to criminalise non-compliance with these practices. In his view, the inconsistencies between various pieces of legislation affecting the non-profit sector are minor and of no real consequence.

On the basis of the above, some observations can be made. In the first place, it appears that there is a need to tighten-up the *NDA Act* in ways that will help the NDA to execute its full mandate and hold it to account not only to the Minister, and Parliament but also to the public and the NPO sector. In spite of the fact that there is provision in the legislation for civil

society representation on the NDA Board, it appears that there are no indications in the Act as to how the NDA should communicate with civil society. Such communication could be an instance of the NDA's mandate from clause 3.1 of the Act to strengthen the institutional capacity of the CSOs.

The suggestion that the business plans and statements of estimated income and expenditure be made available to the public makes sense. It is worth noting, however, that the NDA does seem to be moving, although slowly, in that direction. The authors of its 2000/2001 annual report released this year were given to understand that it is a public document though it may not have been widely distributed.

Second, it appears that in the past two years the NDA failed to carry out some of its duties. For example, the NDA has not given a clear explanation as to why the creation and maintenance of a database on civil society was not prioritised. It is not clear whether this was due to a lack of capacity within the NDA, lack of will or general lack of supervision and monitoring of the execution of its mandate.

Third, it is difficult to understand why the Act omitted or misjudged the importance of the appeal procedures. This omission may be interpreted as disempowering the NPO sector because there is always the chance that some NPOs may be victims of bias in the Board's decisions. The assumption here is that not all the decisions of the Board will be correct in all circumstances.

Fourth, on the relations of the NDA with other government departments, the only reference in the Act to other departments is in section 5(1), where it says that the *then* Minister of Finance is obliged to consult with the Ministers of Education, Health, Housing, Public Works, Trade and Industry, Welfare and Population Development and Water Affairs and Forestry and others considered necessary by the Minister, before appointing the six members that will represent Government in the Board.

Fifth, the *NDA Act* does not provide the structures to link the huge resources for poverty eradication that are available from national and provincial governments, metropolitan councils and local authorities to resources in civil society in a combined programme. The Act requires the NDA to support the non-profit sector and create a partnership between government and CSOs but does not provide the means to achieve this. The NDA is limited by the *NDA Act* 'to promote consultation, dialogue and sharing of development experience between civil society organisations and relevant organs of state' (Section 3 (2) (i)). As Mthembu observed earlier, the non-profit sector is not being brought closer to the state by this Act.

In other words, there is a need to re-examine the legislation that impacts on the lives of people who work in, and are affected by the non-profit sector. This should include:

- checking for consistency between the various pieces of legislation;
- assessing the levels of accountability included in those laws;
- determining whether the non-profit sector finds that the laws create an enabling environment or not;
- identifying whose interests each piece of legislation promotes, individually and collectively;

- conducting an enquiry into whether the equivalent of an ombudsperson for the non-profit sector would be beneficial and useful.

Chapter 3: NGOs, CBOs and the NDA

This chapter examines the relationship between the NDA and the non-profit sector. It examines the NDA's selected focus areas, how it has disbursed funds, how it relates to CBOs and NGOs and how structural relations between the NDA, government and civil society might be managed. It argues that the NDA has narrowed its focus and has not succeeded in disbursing the funds that it could have disbursed. Further the NDA has ignored section 3(1)(b) of the *NDA Act* by not working with other NGOs and grant-makers as intermediaries. Instead, the NDA has opted for decentralisation and has favoured working with CBOs (as distinct from NGOs either directly or as intermediaries), which are assumed to be involved in more direct community service.

Fund Dispersal Focus Areas

The priorities of the TNDT were Education and Training, Health, Rural Development, Urban Development and Small, Micro and Medium Enterprises (SMMEs). In 2001, the NDA re-organised and limited the number of sectors it would fund. These were Education and Training, Economic Development, Rural Development and Health. Areas like Urban Development and SMMEs were dropped in favour of the Economic Development sector.

In 2002, the areas of focus were further narrowed and reduced to three sectors: Economic Development, Education and Health. The 'Training' component of Education and Rural Development was dropped. The three sectors remaining are supplemented by cross cutting issues of rural and urban development, HIV/AIDS, basic services, gender and human resources development.

Along with the three areas selected for attention by the NDA, there are nine Public Benefit Activities (containing 43 sub-activities), which have been declared to be philanthropic or benevolent in nature and are therefore tax exempt and donor deductible in terms of section 30 of the *Income Tax Act*, 1962. These are Welfare and Humanitarian; Religion, Belief or Philosophy; Health Care; Cultural; Land and Housing; Conservation, Environment and Animal Welfare; Education and Development; Research; and Sport.

This reduction in areas of attention, according to Zabala, is meant to sharpen the NDA's focus and, arguably, maximise its impact. He corroborates this when he says that the NDA projects should play an 'animation role' by using money as seed capital to generate activity and, by so doing, 'support civil society in action'. The commitments that the NDA makes, says Zabala, should be small enough to be manageable. This will enable it to impact on wider communities, draw in public works, education, civil society and business.

By specifying its focus areas, the NDA has made it clear that it is not a generalist funder. It is concerned with a very limited number of funding sectors and must therefore exclude projects operating in others sectors even though they are also engaged in the fight for the eradication of poverty. This leaves many NPOs engaged in the eradication of poverty without a statutory body to support or defend them.

Funds Disbursed

According to the report of the Auditor-General, the NDA received funds amounting to R238 328 570, consisting of government grants amounting to R190 million plus a grant received from the EU amounting to R48 328 570. Of the 190 million received from government, an amount of R126 771 620 (67%) was allocated to various projects. That amount represents

disbursements of R49 493 375 (26%) and committed funds of R77 278 245 (41%) for that financial year. The grant received from the EU was not disbursed (*NDA Annual Report 2000/2001*). According to Mthembu, before its funds can be disbursed, the EU requires its technical team to evaluate the environment in terms of 15 policies and tools. He regards this as a complicated process. A further R66 million that was pledged by the EU has remained in EU hands (*Mail & Guardian 19/04/2002*).

The following table, extracted from the *NDA Annual Report (2000/2001)* shows the amounts that were disbursed and committed by province:

Province	Disbursed	Commitments
Eastern Cape	8 236 962	16 411 250
Free State	3 055 815	8 393 461
Gauteng	10 734 211	17 631 594
KwaZulu-Natal	5 441 633	8 227 793
Mpumalanga	3 064 550	2 671 111
Northern Cape	3 029 037	8 273 604
Limpopo	7 187 287	36 085 242
North West	3 345 093	4 970 883
Western Cape	7 483 095	23 903 677

Funds committed by the NDA, in order of magnitude, favour Limpopo, Western Cape, Gauteng and Eastern Cape. However, the funds that were actually disbursed tilt the scale to favour, in order, Gauteng, Eastern Cape, Western Cape and Limpopo. These figures indicate not only a discrepancy in the rate at which funds have flowed to NPOs, but also the incongruence between the amounts committed to provinces and the spread of the population experiencing poverty. According to the 1999 *Household Survey* (cited in Woolard 2002:6), in all estimates the Western Cape and Gauteng have the lowest rates of poverty and Mpumalanga, the Eastern Cape and Limpopo have the highest rates. However, the amounts committed and disbursed to Mpumalanga are far less than those allocated to Gauteng and Western Cape. Also, with the exception of Mpumalanga there is a huge gap between funds committed and those disbursed. An account by the NDA as to how these allocations were arrived at would be of value here.

One explanation is that this gap could be attributed to the NDA's systems and procedures in processing funding applications. According to the *Mail & Guardian (01/02/2002)*, large numbers of cash-strapped NGOs were waiting for the NDA to assess their funding applications, and in some cases even to return phone calls. One of the NGOs had submitted its application three times. The first and the second applications were lost and the NGO only received a reference number when a third application was hand-delivered. It took nine months for the reference number to be issued by the NDA.

A more general concern expressed by grant-makers and in the information Frank Meintjies received from 'organisations on the ground' was that the NDA is 'stuck' and is not able to process the approximately 6 000 applications for funding that it received in response to its most recent call for new funding applications between 2 January and 28 February 2002. The

perception is that the money is not flowing and a sharp distinction is drawn here between money that is allocated and money that is actually disbursed.

This necessitates the development of a strategy that will have an impact on the NDA's current funding procedures and systems. Critical to those procedural issues, is 'the regulation of the application process and the systematic manner in which those are processed.' (*Important Announcement to Our Project Partners and Development Sector*, NDA, n.d., 2002)

By providing funds and capacity building to the sector, the NDA allows NPOs to do what they do best. But, as Cassiem Khan observed, consultation with these organisations that survive by virtue of NDA support merely provides a superficial analysis of the purposes and needs of organisations involved in the eradication of poverty and its causes. Khan makes a very important point here. It is a mistake to discuss the relationship between the NDA and the non-profit sector as if the NDA were exclusively a source of money and expertise and the non-profit organisations were mere recipients.

Khan argues for the NDA to support (and hence engage with) CSOs that play an advocacy and policy-determining role as well as those that are struggling to survive. The point he makes is that although there is a need to support those organisations that are barely surviving so as to increase the base of civil society, there needs to be support for, and involvement with CSOs that are active enough to engage with and shape policy as well. Thus support and capacity building need to be linked to the broader mandate of building civil society as is expressed in the *NDA Act*.

NDA's Relationship with CBOs and NGOs

In terms of section 3 of the Act, the primary object of the NDA is to contribute to the eradication of poverty and its causes by granting funds to certain CSOs directly and to others for the purposes of strengthening the institutional capacity of *other* CSOs involved in direct service provision to poor communities. Khan's question is: why is there a split between those that are funded and those that are to be capacitated? It is interesting to examine how the NDA has interpreted this in dealing with CBOs on the ground and NGOs, which can be seen as potential intermediaries.

In the workshop with grant-makers and the Non-Profit Partnership, the view was expressed that the NDA appears to have excluded NGOs in favour of CBOs. NGOs are viewed as being clamorous whereas the CBOs are seen to do direct delivery quietly. Dithake expressed a similar view, saying that the NDA has interpreted the legislation in such a way that it focuses on CBOs rather than NGOs. Mthembu confirmed and defended the NDA's preference saying that the NDA does not have sufficient funds and capacity to engage intermediaries and prefers to deal directly with CBOs, which are closer to the people.

According to Meintjies, the NDA, in its early days, had a narrow definition of poverty reduction and preferred to deal with CBOs rather than NGOs. He went on to say that CBOs are geographically specific and good at meeting people's needs whereas NGOs are good connecting points for intervening at other levels, lobbying and advocacy, and providing access to the wider world. He argued for a balanced anti-poverty approach that should adopt both a pro-active and a re-active approach.

The NDA's preferred route appears to have ignored most of the recommendations of an earlier study into the use of intermediary grant-makers as part of the NDA disbursement

strategy. *The Final Report into the Use of Intermediary Grant-makers (1998/9)* placed intermediaries in three groups. The A Group comprises experienced and dedicated grant-maker organisations with a knowledge base, tools and organisational arrangements particular to a grant-making role. The B Group comprises national-level organisations with a long history of grant-making but that also carry out implementation programmes. The C Group comprises organisations at local level that play animation, support and resourcing roles in local developments projects but are keen to play a role in locally-based micro funding.

The Report recommended that Group A organisations be used as NDA intermediary grant-makers because of their grant-making capacity, but that the NDA should generally seek to extend the work of such intermediaries. Another recommendation was that the NDA should also utilise the B Group organisations as intermediaries but that it should engage with them to clarify how grant-making will be separated from implementation. The report also recommended that serious consideration be given to affording the C Group a role in monitoring and following up on a contractual basis.

Decentralisation

Another development that characterises the relationship between the NDA and NGOs is a decision by the NDA to decentralise its operations on a permanent basis. According to the NDA, this is a major milestone in operationalising some of the lessons learnt through the Accelerated Grant Disbursal Process that the agency embarked on from September 2000 to March 2001. Accordingly, the portfolio of managing the institutional strengthening of CSOs has been decentralised with the provincial offices and staff playing a leading role. Each province will develop its own database of service providers and utilise local resources. According to the NDA this strategy will allow the agency to be closer to its partners and more responsive to local needs and provincial variations.

Contrary to the NDA's own appraisal, Dithlake, Pieterse and Khan seemed pessimistic about this strategic move. According to Dithlake, the NDA's role is similar to that of an NGO in the way it defines the developmental priorities in particular areas, how it runs workshops and how it sets up provincial offices. He argues that the NDA could be caught up in a very difficult situation. Behind this concern is the desire to see the NDA as different from other donors and funders, having an indigenous and localised character appropriate to South African realities but different from NGOs.

From a governance point of view, Pieterse argued that regional-based decision-making might result in the creation of contradictory rules, which could cause serious problems. In the same vein, Khan pointed out that the NDA is keen to decentralise and establish provincial offices and boards, a course of action that the IDT abandoned because it realised it was a bad idea. Thus, instead of supporting and extending the work of NGOs and intermediary grant-makers, the NDA may be seen, through its decentralisation strategy, to be competing with them.

The NDA and NGOs

According to Pieterse, a precondition for sound relations between the NDA and civil society is that the latter needs to be much clearer about what the NDA is. The main problem is that organisations like SANGOCO and others do not have a clear vision about what the role of the NDA should be, to enable them to engage the NDA in a strategic and effective way. He argued that SANGOCO's critique of the NDA is insufficiently informed and nuanced and is also ideologically driven. He suggested the establishment of a constructive relationship

characterised by sharing of experience, good practice, and building a shared discourse that would not compromise their respective autonomy.

According to Mthembu, SANGOCO only represents some CSOs, which implies that the NDA might prefer to relate to a higher or more inclusive structure than SANGOCO, which would also represent the latter.

According to Dithlake, SANGOCO does not have a good understanding of the NDA's identity and role and the relationship between the NDA and SANGOCO needs to be clarified so that the NGO sector understands what it can expect from the NDA. For example, if the NDA calls meetings, it is not clear who should attend, whether people in those meetings will be permitted to influence the programme or whether they would be there only to listen, and what the priorities and agenda of the NDA are. Further, he said, the role of the NDA has not been tested sufficiently for contradictions to become apparent.

As Frank Meintjies pointed out, there are huge problems with civil society: its leadership, its lack of a common vision, how it works with the wider society, how it is perceived and the hostility between the various factions within it. According to Meintjies, the NDA should ideally be placed to be a civil society voice, to provide a common perspective and knowledge base, to induce conceptual thinking among NGOs, and to bring other sectors to book in conducting relations with CSOs. This suggests that constructive talks between the two are long overdue and that both should shoulder the responsibility for taking such an initiative.

Structural Formation

Mthembu believes that any relationship between the NDA and civil society is best managed when there is a structural formation that regularises the relationship. He argues that because civil society is so diverse the best option would be to have a national forum similar to NEDLAC that is broadly representative of, for example, CBOs, NGOs, faith-based organisations and business, which would engage with the NDA.

Zabala said that the intention of the *NDA Act* was to create an interlock between government and civil society and also suggested that a structure similar to NEDLAC should be used to achieve this. To quote from clause 9.10 of the *Board Strategy*, 'The recognition that civil society is characterised by a plethora of organs, formations and structures that spread a continuum from simple to complex and the need for the NDA to build relationships with a number of these organisations across all levels. In this context, the NDA should be to the organs of civil society what NEDLAC is to business, labour and Government'.

This NEDLAC model would appear to solve many of Mthembu's concerns, quoted earlier, about the need for a collective governmental approach, and his awareness of the uncoordinated and diverse nature of the non-profit sector.

It is difficult to comment in detail on this proposal but if it is pursued it will require major legislative work. However, this is a valid area for debate and it affects the non-profit sector directly. The experience and perceptions of someone like Jennifer Wilson, Development Officer to the Development Chamber of NEDLAC, would be very useful.

Two issues are important here:

1. Would the NEDLAC approach enable a coherent poverty eradication programme to emerge; one that unlocks the funds earmarked for poverty eradication in every government Department at national and provincial levels, as well as the appropriate resources in metropolitan councils and other forms of local government?
2. Would something like NEDLAC bring the relevant sectors of civil society into a structure where they can address each other and the government in the joint quest to develop a poverty eradication programme?

If the structure that the NDA has in mind can achieve that, then it is well worth the cumbersome and ponderous process of getting there. If, however, it results in another bureaucratic morass, then it will severely set back both relations between government and civil society and the process of poverty eradication. This is an area that needs further investigation.

Chapter 4: The NDA and Allegiance

This chapter interrogates some sections of the NDA's *Broad Strategy* in relation to the concept of autonomy and partnership between government and civil society and how it affects the issue of accountability. It is argued that in its orientation and expressed preferences, the NDA appears to be drifting away from civil society and towards government.

The NDA's 'Independence'

It would be a mistake to confuse the NDA's independence ('sponsored by government yet independent of government', *Board Strategy*, February 2002, 5.3) with its role as envisaged by the *NDA Act* in 'promoting an appropriate and sustainable partnership between the Government and civil society organisations...' (Preamble).

The NDA's precious and necessary independence from government is not independence from the *NDA Act* or independence from responsibility to civil society. The NDA is unique internationally because of the degree of autonomy that it has been accorded (Pieterse). That autonomy means freedom from external determinations of how the NDA carries out its mandate. However, there are those who cherish this freedom and there are those who believe that the discretion currently allowed the NDA should be limited.

Normally, such independence is regarded as freedom from interference by the state, something that is implied in the Board's description of the capabilities and characteristics that make the NDA distinctive. According to the *Board Strategy*, the NDA is 'a unique institution that is sponsored by government yet independent of government. It is not a department of government' (5.3). Furthermore, 'The NDA was also founded as a joint initiative of civil society and government and is governed on that basis' (5.4).

These subsections are of particular interest because they emphasise the NDA's claimed independence from government and that it is a creation of both civil society and government. Notice that the NDA does not feel the need to proclaim its independence from civil society. And yet, there is a seeming contradiction here.

Clause 9.11 of that same *Board Strategy* document states unequivocally that the NDA is 'the delivery arm of government'. Not 'a' delivery arm, but 'the' delivery arm, presumably in and to civil society. This astonishing claim will complicate the NDA's relationship with the non-profit sector. Criticisms of the NDA up to now have been restricted to its performance. Now there is likely to be hostility to the very way in which the NDA perceives itself and its role.

The NDA and Economic Policies

In terms of the NDA *Board Strategy* there are 'key macro and sector trends' that inform its strategy. Amongst these are:

- the effective implementation of the macro-economic policy that has facilitated stability and balance (9.4);
- the regional integration and development agenda as determined by initiatives and structures like the new Partnership on Africa's Development (NEPAD), the African Union (AU), the Southern African Development Community (SADC) and the like (9.5);
- the fact that the NDA, as a public entity that is the delivery arm of government, occupies a particular niche in development in the country (9.11); and

- the need for the NDA to define clearly for itself the costs and returns on investment for dealing with poverty (9.12).

These ‘key macro and sector trends’ imply that the NDA endorses the government’s economic policies and that the causes of poverty will not be sought either in the actions or the policies of government (9.4). The basic economic macro-economic policy of the South Africa government is known as the Growth, Employment and Redistribution (GEAR) plan. COSATU argues that GEAR has failed to deliver the promised economic and job growth or significant redistribution of income and socio-economic opportunities in favour of the poor. They say that GEAR, with its focus on stringent monetary and fiscal targets, conflicts with the RDP’s goal of growth based on job creation, meeting people's needs, poverty reduction and a more equitable distribution of wealth.

In contrast to this political progress, in socio-economic terms the legacy of apartheid remains entrenched and, with the massive loss of jobs in the past decade, even appears to be worsening. Wealth is still concentrated in a white minority. The nature of capital remains largely the same – concentrated in the mining-finance complex, which continue to dominate the commanding heights of the South African economy. Serious inequalities persist, with signs of worsening particularly among the formerly oppressed. The number of people living in poverty is staggering. Almost half of the population lives in poverty, including many of the employed – the ‘working poor’. Unemployment and underemployment are on the rise as more jobs are shed and people rely on survivalist activities to make ends meet. The complex nature of the transition emerged in deeply contradictory government policies. (COSATU policy statement, July 2001)
<http://richardknight.homestead.com/files/sisaeconomy.htm>

These ‘key macro and sector trends’ also imply that the NDA is part of the patriotic and nationalist plans of South Africa for the region and for the continent (9.5). In April 2002, the Heinrich Böll Foundation, together with the Mazingira Institute and the African Academy of Sciences, held its African Forum for Envisioning Africa, which critically examined NEPAD and its underlying principles. The Forum concluded that NEPAD follows the same neo-liberal principles that are under heavy criticism by civil society worldwide as being responsible for increasing gaps between rich and poor, resulting in economic disasters such as the recent clashes in Argentina. Other than the recognition of the central role of the African people in development, civil society has not played any role in the conception, design and formulation of NEPAD. Furthermore, NEPAD adopts social and economic measures that contribute to the marginalisation of women and does not question the global economic system that, in civil society's view, plays a major role in Africa's continued economic difficulties. The Forum concluded that NEPAD might rather be a continuation of the highly questionable Structural Adjustment Programmes, now including privatisation of public services such as water and electricity supply or health services
<http://www.worldsummit2002.org/index.htm?http://www.worldsummit2002.org/activities/nepadforum.htm>.

Further, ‘key macro and sector trends’ suggest that that the NDA is now part of government and this holds other dangers in terms of what the NDA will become and how it will be perceived (9.11) and whether poverty is to be approached in a spirit of utilitarian calculus that weighs up human suffering in terms of profit and loss (9.12).

The NDA Board has unequivocally aligned itself with government and with initiatives currently favoured by the President. The NDA has positioned itself within the market economy and has dropped any ideas that poverty might be linked to present government policies. According to this position, only the past and not present actions can be seen as being responsible for poverty.

The question that must be asked here is this: by aligning itself to GEAR, thereby endorsing structural unemployment, does the NDA contribute to the alleviation or to the creation of poverty in South Africa?

The NDA and Values

Since the rhetoric of resistance, then of assertion and now of transformation has been dropped, and since corporate language now influences thinking about structures and their inter-relationships, a deep uncertainty over which values should govern public life has emerged. This is neither surprising nor alarming, but it does create significant confusion.

A recent example of this was the list of ‘values’ generated for education by the commission chaired by Wilmot James. Subsequently, it took a huge amount of work – including an international conference – to produce a list of values that ought to characterise the educational experience of the young. And this process is ongoing.

The NDA Board also identified five values for the NDA, which were to:

- uphold and *respect* the primacy of the individual, the group and society in their quest to seek *decent* living standards;
- work in partnership with others for the common *good*;
- be *honest, trustworthy*, open and accountable for our actions and resources entrusted to us by the Government and other partners;
- be dependable, flexible and responsive to our contractual and non-contractual stakeholders;
- intervene with skill, *diligence* and *dedication* in pursuit of meeting the needs of our partners. (*Board Strategy*, pp 1 – 2) [*our emphases*]

These values have implications for the relationship between the NDA and the non-profit sector. Most of these values (respect, decency, goodness, honesty, trust, diligence, dedication) emerge out of a discourse of morality that implies an attempt at ‘moderating and controlling human behaviour. It prescribes, in predetermined and undemocratic ways, what ought to be the case. It puts into place single, allegedly correct interpretations of phenomena, since the discourse of morality projects itself discursively as the determiner, bearer and articulator of the truth, which cannot be questioned or debated. The discourse of morality, then, holds within it the tendencies of fundamentalism, conservatism, a disregard for democracy and denial of human rights’ (Carrim et al, 2000:5).

The main problem with the NDA’s set of values is that it assumes that all participants (stakeholders) are on an equal footing – hence the stress on ‘partnership’ – and that each stakeholder relates to the others in an uncomplicated, naïve and autonomous way. These values presuppose that in the relationship between the NDA and CSOs there are no

dependencies, no debts, no shortcomings or other complicating factors that might interfere with relations between them.

There are a number of difficulties with this set of values, coming as it does from liberal, nineteenth-century thinking, influenced by the political values that Europe inherited from the bourgeois revolution of 1789 in France, given shape in the American Constitution and leaked, via a host of organs devoted to the propagation of particular sets of values and certain kinds of morality, through to the societies of most contemporary democracies. These values are the descendants of corporatist and global priorities. The underlying assumption here is that of Modernism: the Truth will bring that progress (development) which we all are supposed to desire.

In reality, this is clearly not the case and never will be. These values do not acknowledge the unequal relationships between government and the NDA and between the NDA and CSOs. Failure to acknowledge these inequalities is likely to make the NDA Board and the NDA management perpetually defensive about the role and actions of the NDA, and thus unable to be sufficiently pro-active in carrying out the full mandate set out in the *NDA Act*.

The NDA's role in Partnership

An account of the NDA's relationship to the non-profit sector has to include comment on the relationship between the NDA and the government and how the NDA should relate to a partnership between government and civil society in their endeavour to eradicate poverty.

In the previous chapters it was observed that there are no clear structural lines between the NDA and other government departments and that the process of appointing six members from government is not outlined in the *NDA Act*.

According to Mthembu, government generally sees civil society as a 'high risk' group composed of people who complain and want grants and a better share of something, and who are not accountable, equipped or professional. Meintjies corroborates this when he says that within the ANC there appears to be an apathetic attitude towards NGOs in that the latter are said not to have a mandate from the electorate. It has also been alleged that government does not regard the non-profit sector seriously enough.

An egregious instance of this is the South African Revenue Services' recent advertisement in newspapers calling on all NGOs and NPOs to register for income tax purposes. This was done without any consultation with the non-profit sector though such a requirement puts a strain on CSOs, most of whose members do not read newspapers or have the resources to comply with this new requirement.

Mthembu's argument, therefore, is that government could use the same brush that is used on the NGO sector to tar the NDA, because it might become a union for civil society. Such views might explain in part why the NDA receives such limited resources from government and why the commitment to gradually increase the allocation of funds to the NDA has not been honoured. Dithake is not convinced that the government sees a role for the NDA in the future and he thinks that the government might well be thinking of other alternatives.

Central to the role of the NDA in managing the relationship between government and civil society, is the concept of partnership. There appears to be a contradiction between how this concept is perceived in the *NDA Act* on the one hand and the *Board Strategy* on the other.

The Preamble to the *NDA Act* says, ‘To establish a National Development Agency aimed at promoting an appropriate and sustainable partnership between the Government and civil society organisations to eradicate poverty and its causes ...’. The partnership envisaged here is between government and CSOs. The NDA Vision, as expressed in the *Board Strategy* reads: ‘To be the premier partner to civil society and government in eradicating poverty in South Africa’. This suggests that the NDA sees itself as a partner to government and to civil society.

The difference between these two interpretations is an important one. The writers of this Report regard the NDA, in terms of the Act, as an *agency* intended to achieve a particular end, i.e. the eradication of poverty through enabling the actions of government and civil society to be brought together into a partnership. The role of the NDA, therefore, should be a mediating one, an enabling one. It should play what Griffiths Zabala calls an ‘animation role’. This wording suggests that the government intended the NDA to be a vehicle for connecting and integrating the government’s poverty eradication programmes with those of CSOs.

By envisaging itself as a ‘premier partner’ to government and to civil society, however, the NDA appears to be creating a third role player in what, according to the *NDA Act*, should be a dual interaction between the organs of state and those of civil society. Our understanding of ‘agency’ is neither a passive nor a static one. Examples abound of agencies playing active roles. It is important that the status and role of the NDA in relation to the issue of ‘partnership’ be clarified.

If the NDA is to act as an independent and distinct entity with government and civil society, then certain implications flow from that. If, on the other hand, the mandate of the NDA is understood to be one that is restricted to enabling government and civil society to work in partnership to eradicate poverty and its causes, then the NDA can be expected to play a somewhat different role in the process. In this scenario, it is not the function of the NDA, for example, to be involved directly in the eradication of poverty, but to increase the capacity of the government and civil society to do so, using the six requirements as stipulated in Sections 3 and 4 of the *NDA Act*.

Can the NDA establish a ‘partnership’ with two entities that are so different and so unequal in terms of power, scope and access to resources? It would be wrong to overlook the power relations implicit in this scenario. Given its responsibility for the disbursement of literally hundreds of millions of rands, the NDA wields enormous power over the destinies of organs of civil society that need funds from it. Those ‘other’ organisations specified in the *Act* that the NDA might select for capacity building are also under the patronage of the Agency so this cannot be a true partnership. The concept of a partnership between the NDA and civil society becomes tenuous when it is recognised that to CSOs, the NDA is a major source of income, a grant-maker with the power to allocate or withhold the funds essential to the continuance of many NGOs and CBOs. Such a relationship of unequal power and dependency cannot be described as a partnership.

To be fair, it is highly unlikely that the NDA Board envisages a partnership relationship between the NDA and individual CSOs, but rather with those structures that represent them, such as SANGOCO and the Non-Profit Partnership. Even so, there is no present facility within the *NDA Act* that requires a partnership between NDA and the bodies that represent CSOs. And having nine out of 15 nominated members of the NDA Board who are supposed

to represent civil society but are actually drawn from the 'community' does not constitute a partnership with civil society.

In relation to the government, the NDA is located in a specific department to which it is beholden for funds that the Minister can persuade the Cabinet to release for that purpose. Furthermore, the NDA is obliged to submit its business plans and draft budgets to the Minister for approval and the NDA, as a statutory body, must report to Parliament and hence to a number of Portfolio Committees. Again, this arrangement does not have the constituents of what would ordinarily be termed a 'partnership'. In fact, the *Act* requires the NDA to be a conduit, a provider of resources and skills, a co-ordinator of discourse around development policy and a generator of published research for that purpose.

A number of those who were interviewed expressed similar reservations about the NDA's concept of partnership. For example, Dithlake also understands the term to presuppose equals, and in his view the NDA, as presently constituted, only can be an agent of government.

Meintjies is concerned that the NDA plays a role of building mutual respect between the government, the private sector and NGOs, and that it should link those who are engaged in developing policy and programmes with people on the ground. In other words it should be an active agency.

For Khan, the term 'premier partner' in the *Board Strategy* seems to suggest that the NDA's role is *almost* that of government, and that such a stance implies that the NDA will not be critical of government.

Interestingly, the grant-makers were more concerned about the kind of partnerships that the NDA would be willing to establish with them. For example, should the NDA join the South African Grant-makers Association (SAGA) or establish another form of relationship with it? Should it create bilateral links, say with Ithuba, or should it attempt to group or cluster those grant-making organisations with whom it establishes partnerships? Although the NDA seems, at this stage, to prefer bilateral arrangements, the grant-makers want to make sure that the multitude of influences on the NDA from many different quarters should be coherent.

Dithlake said that the initial assumption in the relationship between the non-profit sector and the NDA should be that the NDA should be a unique organisation that is able to collaborate with civil society, especially in determining the framework within which development financing takes place.

The question of scale and the NDA's relationship to the non-profit sector also arises in relation to the size of the NDA itself. When asked why the NDA establishment only employed 79 staff members (*Board Strategy, February 2002*), Mthembu said that this was deliberate and consistent with the original mandate of the NDA: to achieve scale through partnerships and, therefore, not increase the size of the NDA.

Dithlake also raised a number of pertinent questions in this regard. For example, he asked whether the South African government was capable of giving resources to the NDA and then allowing it to sponsor organisations that might, in critical ways, differ from the government on certain issues. This question, he avers, remains untested. And a further, but related question is that when the NDA finds itself having to choose between loyalty to government and civil society's interests, will it be able to remain neutral? In a young democracy where

patriotism and nationalism still have a particular intensity can the government invest funds in organisations where its policies are being contradicted?

Although commentary has been directed at one side of the government/civil society equation, it has become clear that it is impossible to talk about the one without the other, and that there are tensions between the two sides. It has to be the task of the NDA to achieve what the Act calls ‘an appropriate and sustainable partnership’ and this is what complicates the NDA’s task.

It is the view of the Acting CEO that ‘there is a seed of a partnership’ between civil society and government which should be nurtured until it can germinate properly. He believes that within an appropriate structure, the government will come to recognise the contribution that civil society makes. The need for a strictly structured context in which the NDA brings civil society and government together is an historic one. Civil society has never been a partner of government and a structured approach is necessary to change the mindset of bureaucrats.

Accountability

In the workshop with grant-makers the view was expressed that the NDA represents a hard-won victory for civil society and should therefore report to civil society and be defended by civil society. The questions they could not answer were: where do the representatives of the civil society in the NDA Board derive their mandate, are they obliged to account and, if so, to whom should they be accountable to?

According to section 5 of the Act the NDA Board will also be comprised of nine members representing CSOs appointed by the Minister. However, according to Mthembu, these Board members do not represent CSOs but come from communities. They are ordinary citizens and do not represent any specific organisation and he himself is not a member of any forum. This arrangement seems to raise very serious structural and accountability issues between the NDA and the CSOs.

Mthembu’s view is that the NDA as a whole, not just the nine members, needs to report back and make information available. He suggested that there could be two meetings a year with CSOs, including grant-makers. The first one could concentrate on broad policy priority issues and the second one could be used for reflecting back and looking at what has been achieved. The success of this initiative, he said, would depend on whether individual characters were willing to be open or chose to be competitors.

Zabala felt that institutions at times become ends in themselves. He saw accountability as a social audit process that remains with the primary stakeholders and how they drive the process and said that the representation of civil society on the NDA Board attests to that. He also cautioned that accountability is a delicate route to navigate and that the communication’s department of the NDA will need to play a much greater role in this regard.

Pieterse regarded accountability as the key issue and felt that the need for public accountability should be raised much more substantially so that the contact with grass roots constituencies could be maintained. He said, for example, that the NDA could put out a sample of their projects for an independent audit of poverty criteria by ordinary people who work on the ground. He argued that ‘unless the political cost becomes too high on the way the NDA is functioning now, both in terms of the minister that is accountable and the board members, there will be no change’. He added that this political cost would come when CSOs

began to demand more accountability from the NDA. Similarly, Dithake also believes that there has not been enough pressure on the NDA to account for itself.

Chapter 5: Synthesis and Recommendations

- 1 Both government and the non-profit sector have different advantages that should be exploited and combined to eradicate poverty. Therefore any crisis that affects the non-profit sector should be of direct concern to the government. The Report recommends that:
 - 1.1 Government should maintain, strengthen, and commit itself to the sustainable development and economic viability of the non-profit sector.
 - 1.2 Further investigation into the NDA's location in government is needed so that it can interact within and cut across Ministries without being beholden to any particular Ministry.

- 2 The *NDA Act* does not provide the NDA with enough inducement to work with the public and NPOs effectively. Also, some of the related laws do not provide the non-profit sector with an optimum environment in which to thrive. This Report recommends a focused study that will look at how legislation affecting the non-profit sector can be aligned. It further recommends the following changes to the *NDA Act*:
 - 2.1 The Act should be amended generally to provide for the NDA to account to the non-profit sector and other sectors of civil society.
 - 2.2 There should be a provision that outlines how the government representatives on the NDA Board should be elected or appointed.
 - 2.3 The reference to the Ministry of Finance as an executive authority should be changed either to the current Social Development Ministry or to another area of government, which would permit access to the poverty eradication funds and programmes of all Ministries.
 - 2.4 There should be provision for the NDA budget and business plans to be influenced by civil society.
 - 2.5 There should be a provision in the Act to ensure that the NDA Board is not the sole determiner of funding criteria. The law should permit regulations to set up criteria that are open to public scrutiny.
 - 2.6 There should be provision for appeals against funding and other decisions made by the NDA.

3. The NDA has not fulfilled its entire mandate. It has concentrated on fund disbursement and neglected research, policy dialogue, and capacity building. This includes duties like creating and maintaining a database of CSOs. This Report recommends that:
 - 3.1 There should be increased monitoring. The NDA should not only account to Parliament and be checked by the Minister and Attorney General, but the non-profit sector should also play a monitoring role.
 - 3.2 The NDA should work with NGOs, Research Institutes/Units, organisations and structures to encourage debate and research on poverty eradication and its causes. This will help to focus poverty intervention strategies and programmes.
 - 3.3 The NDA should create and run an updated database of all CSOs within six months. This should be shared with all relevant institutions and organisations.

4. There is insufficient congruence between the funds committed and disbursed by the NDA to provinces and areas where poor people live. The Report has also found that the NDA should have received and distributed more funds. This Report recommends that:

- 4.1 The technical requirements of the EU should be quickly attended to by the NDA.
- 4.2 More funds should be committed and disbursed to the poor provinces in order of need, i.e. Limpopo, Eastern Cape, Mpumalanga, and KwaZulu-Natal.
5. The NDA neglected section 3 (1) (b) of the *NDA Act* and has chosen to deal with CBOs who are deemed to be in direct service with communities. This Report recommends that:
 - 5.1 The NDA should make use of, and collaborate with NGOs and grant-makers for accelerated fund disbursement and for policy dialogue.
6. The non-profit sector is wide, diverse and not well organised and is unable to engage with NDA in a structured and effective way. This Report recommends that:
 - 6.1 NPOs should seek to understand the role and identity of the NDA in order to engage with it more effectively and constructively.
 - 6.2 The NDA needs to establish processes that engage the non-profit sector in its programmes.
 - 6.3 The non-profit sector should be enabled by legislation to comment on, monitor and influence the work of the NDA, especially its budgets, business plans and funding criteria.
7. The NDA's primary function should continue to be that of enabling the work of government and that of the non-profit sector on poverty eradication to be continued, rationalised and made optimally effective.
8. Any decision that the NDA takes in regard to the government's economic policies will profoundly influence its capacity to contribute to the eradication of poverty. It is our view that such decisions will most radically affect the non-profit sector and its relationship to the NDA and government.

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List of Acronyms

AC	Advisory Committee
AU	African Union
CCMA	Commission for Conciliation, Mediation & Arbitration
CEO	Chief Executive Officer
CSO	Civil Society Organisation
CSS	Centre for Civil Society
EPU	Education Policy Unit
EU	European Union
IDT	Independent Development Trust
LAB	Legal Aid Board
LRC	Labour Relation Council
NDA	National Development Agency
NEDLAC	National Economic Development and Labour Council
NEPAD	New Partnership on Africa's Development
NGO	Non-Governmental Organisation
NHB	National Housing Board
NPO	Non Profit Organisation
NPP	Non-Profit Partnership
PFMA	Public Finance Management Act
RDP	Reconstruction and Development Programme
SABS	South African Bureau of Standards
SADC	Southern African Development Community
SAGA	South African Grant-makers' Association
SANGOCO	South African National NGO Coalition
SMMEs	Small, Micro and Medium Enterprises
TNDT	Transitional National Development Trust
USAID	United States Agency for International Development