

SECTION27 SUBMISSION TO THE NATIONAL LOTTERY DISTRIBUTION TRUST FUND

22 May 2012

BACKGROUND

1. SECTION27 is a public interest law centre that uses and develops the law to advance human rights. Previously the AIDS Law Project, working since 1993, SECTION27 is a donor funded organisation, funded by international philanthropic organisations and foundations, and some governments. Only a small fraction of funding comes from South Africa. As a law clinic, SECTION27 conducts research, advocacy and litigation to change socio-economic conditions that undermine access to healthcare services, basic education and other fundamental rights. We act in the public interest to implement the National Strategic Plan on HIV/AIDS, Tuberculosis and STIs 2012 - 2016; improve access to healthcare services in the public and private sectors; improve access to food and basic education; and also to promote human rights regionally and internationally.
2. SECTION27 welcomes the opportunity to make this submission to the NLDTF. Although we have not previously applied for funding from the National Lottery, we make this submission in the belief that social justice or human rights work – with the objective of upholding and making real the principles and values of the Bill of Rights and the Constitution generally - should be prioritised by the NLDTF in the next period.
3. We refer to the Invitation for NLDTF Stakeholder Inputs issued on or about 24 April 2012 (“the notice”), in which the NLDTF called for submissions from the public. The notice refers to the Regulations dealing with the procedure for the distribution of funds¹, which provide that at

¹ Direction and Procedure for the Distribution Agencies in Relation to the Distribution of Funds from the National Lottery Distribution Trust Fund Government Notice R644 in Government Gazette 33398 dated 20 July 2010.

least 50% of funding available for distribution by a Distribution Agency must be directed towards rural, underprivileged and poor communities.

CURRENT PRIORITY FUNDING MODEL FOR CHARITIES

Allocation of money in the Fund

4. The Board allocates a percentage of the funds in the Fund as follows:²

4.1. Charities	45%
4.2. Sport and recreation	22%
4.3. Arts, culture and national heritage	28%
4.4. Miscellaneous	5%

Distribution of funds

5. According to the Lotteries Act, 57 of 1997 (“the Act”) and the regulations thereto, when distributing funds, the Minister and distributing agencies are required to “take into account general development in the Republic, with specific references to the regional, economic, financial, social and moral interests of the Republic and the enhancement of the standard of living of all the people in the Republic”.³
6. The Act recognises that the model for lottery funding should be responsive to national priorities, but there is no clarity as to what constitutes national priorities – which may result in important programmes that have a real and sustainable impact on rural, underprivileged and poor communities not getting funding. For example, those conducting advocacy and services in line with the National Strategic Plan on HIV/AIDS, Tuberculosis and STIs, the country’s national response to HIV/AIDS.
7. The May 2010 Direction also identifies particular priority areas although the rationale for these specific issues is unclear from the Direction itself or from any other policy statement by the Minister. According to the Direction, 50% of funds must go to the following priority areas (dealing with charity or welfare activities):

² Section 26 of the Act and regulation 2.1 of the Regulations Relating to Allocation of Money in National Lottery distribution Trust Fund.

³ Part 1, clause 1 of the Direction and Procedure for the Distribution Agencies in Relation to the Distribution of Funds from the National Lottery Distribution Trust Fund Government Notice R644 in Government Gazette 33398 dated 20 July 2010.

- 7.1. Expansion of home based care services through training and infrastructure development for the aged, the sick, vulnerable as well as the orphaned children, disabled and rehabilitation homes, so as to enhance the standard of living in the rural underprivileged and poor communities; and
- 7.2. Provision of educational facilities designed to enhance literacy through early childhood education, adult literacy, vocational training and mentoring for skills development that include disabled people.⁴
8. The remaining five priority areas, for which 50% of the funds are reserved, deal with sports and recreation; traditional knowledge and culture; arts and crafts by the disabled and women; cultural heritage; entrepreneurial development for women and farming communities.
9. The Regulations Relating to Allocation of Money in the NLDTF provide that entities that qualify for charitable expenditure must:
- be an organisation or institution established for charitable, benevolent or philanthropic purposes, including friendly societies, welfare organisations and conduit organisations or trusts in respect of any such organisation or institution.⁵
10. Such an organisation must also demonstrate that it aims to improve the quality of life of people and communities who are disadvantaged by poverty or social exclusion.
11. Furthermore, the organisation must show that, if granted, the funds would be used for at least one of the following:
- 11.1. Community activities which are likely to improve the quality of life of the community as a whole;
- 11.2. Projects that impact highly disadvantaged or excluded groups such as the elderly, the disabled and children; or
- 11.3. Facilities for the under-privileged.⁶

⁴ Part 1 Clause 3 of the Direction.

⁵ Clause 3.1.1 of the Regulations Relating to Allocation of Money in the National Lottery Distribution Trust Fund in Government Notice R 645 in Government Gazette 33398 dated 20 July 2010.

⁶ Clause 3.1.5

12. There is a further requirement that any funds received will be used for public good and that there is a demonstrable demand for the service sought to be funded.
13. The above are all important and all are inevitably linked to social justice and human rights work in any context, indeed the public interest is a central consideration in this work. However, we take this opportunity to submit that the requirements in the Regulations are quite extensive and that the Direction for which input is being sought should be simple, broad and accommodate a wide range of charities and organisations that provide welfare *as well as social justice and human rights services* to communities across South Africa.

OUR RECOMMENDATIONS FOR PRIORITY FUNDING FOR CHARITIES

14. In our view, the above funding requirements for charities are too specific and too narrow. Charities that provide other services to the aged, sick and vulnerable – for example mental health services for the aged that are not home based – would not qualify for priority funding. This approach takes a narrow view of programmes that are deserving of funding on a priority basis. Also, it does not take account of the innovative ways in which organisations are providing services to communities in need.
15. Consequently, we recommend that the NLDTF prioritise social justice and human rights organisations that conduct high impact programmes, promote the rights in the Bill of Rights and that uphold the core values of the Constitution, including the rights to dignity, equality and freedom.
16. Human rights advocacy and education, monitoring and ensuring accountability has been shown to benefit poor and disadvantaged communities. The National Planning Commission Diagnostic Report⁷ (“NPC report”) makes important points about the importance of community participation in a participatory democracy. The NPC report specifically states that civil society plays an important role in raising important human rights issues and placing them at the forefront of the national agenda. The report refers to the Treatment Action Campaign (TAC), the grass-roots organisation that actively enforced socio-economic rights in the realm of ensuring access to anti-retroviral medicines in the public sector. The TAC did this through legal action, bolstered by a social movement of people living with HIV and who were in need of life-saving medicines.

⁷ Available from <http://npconline.co.za/pebble.asp?relid=68>.

17. The NPC report states that organisations such as TAC and others should not be unwilling to confront and criticise government in pursuit of social change. These groups have a legitimate voice in our democracy – whether through engaging local government, through community dialogues, the media or the courts. The report finds that:

More deliberate efforts are needed to ensure that the voices of those who claim to represent the poor and marginalised can also be heard. Like organisations representing business and organised labour, these bodies may be more inclined to push for short-term objectives, but international examples show that carefully considered relations between the state and voluntary organisations can improve the policy-making process.

To formulate and implement pro-poor policies there must be effective mechanisms for the voices of citizens to be heard, and the administrative and political elite must be prepared to listen to and engage with the views of the most marginalised.

18. Empowering communities to participate in democratic processes at all levels of government is mandated by the Constitution. In our view, the Constitution and the statutory imperative to consider the “regional, economic, financial, social and moral interests of the Republic and the enhancement of the standard of living of all the people in the Republic”⁸ in allocating funds requires the support of social movements. Indeed, the importance of citizen empowerment and supporting a participatory democracy has been pronounced on by the Constitutional Court.⁹ An active citizenry helps to effect social cohesion and contributes significantly towards nation building. Justice Ngcobo in the *Doctors for Life* case stated the following:

In the overall scheme of our Constitution, the representative and participatory elements of our democracy should not be seen as being in tension with each other. They must be seen as mutually supportive. General elections, the foundation of representative democracy, would be meaningless without massive participation by the voters. The participation by the public on a continuous basis provides vitality to the functioning of representative democracy. It encourages citizens of the country to be actively involved in public affairs, identify themselves with the institutions of government and become familiar with the laws as they are made. It enhances the civic dignity of

⁸ Section 32(4) of the Lotteries Act.

⁹ See inter alia *Doctors for Life International v Speaker of the National Assembly and Others* 2006 (6) SA 416 (CC); *Matatiele Municipality v President of the Republic of South Africa* 2007 (1) BCLR 47 (CC); *Moutse Demarcation Forum and Others v President of the Republic of South Africa and Others* 2011 (11) BCLR 1158 (CC).

those who participate by enabling their voices to be heard and taken account of. It promotes a spirit of democratic and pluralistic accommodation calculated to produce laws that are likely to be widely accepted and effective in practice. It strengthens the legitimacy of legislation in the eyes of the people. Finally, because of its open and public character it acts as a counterweight to secret lobbying and influence peddling. Participatory democracy is of special importance to those who are relatively disempowered in a country like ours where great disparities of wealth and influence exist.¹⁰

19. Consequently, there is an obligation on the State to ensure the sustainability of social justice and human rights organisations, including through funding mechanisms such as the National Lottery Fund.
20. This kind of focus on social justice is not a unique way in which to distribute lottery funds. Similar lottery funding in other countries indicates a preference for broad categories for funding and consequently, a diverse range of organisations and programmes receive lottery funding with a key focus on sustainable social change. For example, the United Kingdom's Big Lottery Fund's (UK Lottery) has as a central objective, to implement the fund in a way that promotes adaptability, flexibility and responsiveness. The UK Lottery funding follows three themes, namely: community learning and creating opportunity; promoting community cohesion and safety; and promoting well-being. The Funds are granted over these broad themes to organisations that champion key principles such as equality and sustainable development, in fact the lottery sees itself as a champion for social change. Their strategic framework states that "by 2015, BIG will be seen as a champion of communities and disadvantaged people, wherever they live. Some communities are defined by place; others by people having needs in common who are geographically dispersed. We are concerned about both."
21. The UK Lottery is also keenly aware of "the many different ways in which need manifests itself."¹¹ In other words, the lottery aims to be flexible and intervene effectively, with real impact.¹² In our view, this is an approach that should be followed.

The link between social justice, human rights and charity

22. We make the proposition that to realise socio-economic rights, one needs more than the immediate relief of people in distress, but also requires social justice movements to assist by

¹⁰ At paragraph 115.

¹¹ http://www.biglotteryfund.org.uk/index/funding-uk/new_programmes.htm (accessed on 20 May 2012).

¹² Further examples of funding for human rights in the UK, the Netherlands and Sweden see Annexure A.

various means to make the structural change to improve people's lives sustainably. This includes legal action, engagement in policy and legislation making processes, research and evidence gathering, direct action and advocacy. Providing relief to alleviate the immediate consequences of destitution but not in support of addressing the underlying determinants of economic insecurity is a process without end.

23. To this end, the courts have become an important forum for addressing these underlying determinants, and social impact litigation is a useful means for the poor to assert their human rights. Unfortunately, the inequalities between rich and poor will be perpetuated if only the wealthy have any meaningful access to justice through the court system. This is addressed through the work of social justice movements which facilitate access to justice.

24. For example, SECTION27 recently successfully litigated against the Limpopo Department of Education and the Department of Basic Education in relation to their failure to provide textbooks to learners at public schools throughout Limpopo for almost half of the academic year. As a result of this litigation, the right of these learners to a basic education has been recognised. They will receive their textbooks and will thus be able to learn effectively and empower themselves to become active and informed citizens. In addition, they will be offered a catch-up programme as a remedy for the government's failure to provide textbooks for the first half of the academic year. These learners come from some of the most rural and impoverished communities in our country. Their province does not, save for a few small areas, have a High Court of its own and thus they were forced to seek relief through the North Gauteng High Court, hundreds of kilometres away. They do not have the financial or practical means to do so on their own and must rely on the social justice organisations for meaningful access to justice. It is only through this movement that their conditions of poverty and inequality may be addressed effectively.

25. In the eloquent words of Julian Bond, past chairman of the National Association for the Advancement of Coloured People (NAACP),

“many are attracted to social service - the rewards are immediate, the gratification quick. But if we have social justice, we won't need social service.”

26. In 1910, Jane Addams, in discussing the movement that established some of the first social protection legislation in the United States, said:

we have here an epitome of the most advanced philanthropy, stimulation of inventions which shall relieve the poor from degrading drudgery, co-operation with commercial enterprises, and finally protective legislation.¹³

27. An advocate for the rights of the blind, Helen Keller, wrote around 1912,

until the great mass of the people shall be filled with the sense of responsibility for each other's welfare, social justice can never be attained.¹⁴

28. While philanthropy and social justice have the same social goal to improve the quality of life of everyone, it is not reasonable to use public funds in furtherance of one side of that coin and not the other. In a democratic society, we have to recognise the need to challenge the status quo both in relation to public and private power.

CONCLUSION

29. In conclusion, we recommend that the protection and promotion of social justice and human rights are established as priority areas for funding by the National Lottery going forward.

30. We thank the NLDTF for the opportunity to make this submission. For further information please contact Umunyana Rugege at rugege@section27.org.za or 011 356 4120.

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¹³ Jane Addams 'Charity and Social Justice' a speech before the National Conference of Charities and Corrections at St Louis, 19 May 1910 published in The North American Review, Vol 192, No 656 (July 1910) pp 68-81.

¹⁴ Helen Keller biography available from <http://www.spartacus.schoolnet.co.uk/USAkeller.htm> (accessed on 20 May 2012).