



Tutorial Letter 501/3/2018

**Paralegal Advice Centre
PAC2602**

Semesters 1 and 2

Department of Mercantile Law

This tutorial letter contains important information
about your module.

BARCODE

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INTRODUCTION

Welcome to the Paralegal Advice Centre module (**PAC2602**). We suggest that you approach your study of this module by first getting an overview of the module. An overview will enable you to identify what you will need to have mastered by the end of the semester to successfully complete the module.

In this module you will be studying various topics relating to a Paralegal Advice Centre.

In **Study Unit 1** you will study the important role Paralegal Advice Centres played during apartheid and are currently playing in a democratic South Africa. The meaning of concepts such as “paralegal” and a “Paralegal Advice Centre” and the important role they fulfil in communities are discussed. Furthermore you will study different steps to be followed in establishing a Paralegal Advice Centre including the drafting of a constitution for a Paralegal Advice Centre if it is required to operate in terms of a constitution.

Study Unit 2 covers the financial side of establishing and running a Paralegal Advice Centre. This consists of preparing, managing and enforcing a budget, and how to prepare for the annual audit.

Study Unit 3 deals with the registration of a Paralegal Advice Centre as a NPO, the benefits of such registration, the different types of entities or structures for which the Non-Profit Organisation Act 71 of 1997 (hereafter referred to as ‘the NPO Act’) provides and how to choose the most suitable entity or structure for purposes of registering the Paralegal Advice Centre.

The outcome of this module is primarily to enable you to establish a Paralegal Advice Centre, to prepare a constitution for it and to prepare a budget for it from period to period.

PRESCRIBED MATERIAL

This tutorial letter (**501/3/2018**) will serve as your study guide for the module. You will also receive other tutorial letters from the University. Please note that **there is no prescribed text book for the module.**

THE STRUCTURE OF EACH STUDY UNIT

Each study unit starts by providing outcomes for that study unit. Once you have worked through the study unit thoroughly and methodically, you should be able to achieve the stated outcomes. Each study unit is divided into different **headings**.

Self-assessment exercises, activities and feedback are included in the study units. The activities are based on the material that was covered. In order to complete each activity successfully, you must understand the work on which it is based. Please note that the answers that are provided are not necessarily complete.

HOW TO USE THIS TUTORIAL LETTER (STUDY GUIDE)

Study the relevant parts in your study guide before attempting the activities. Only after you have mastered the material under a specific heading, should you attempt to complete the activity, if one is included. Try not to look at the answers. The activities are a very important part of the study material and you are encouraged to do them. They will help you to understand the relevant concepts and you will learn by doing them. They will also give you practice in attaining the specified outcomes.

After you have completed the activities, compare your answers with those given in the study guide. The activities ought to highlight any difficulties you may have with the work. By doing the activities you will be able to keep a constant check on your progress through the work.

GLOSSARY

Before discussing the different topics under the study units as indicated above we provide you with the following definitions of important concepts which will be used throughout this module:

Annual General Meeting: An annual general meeting (commonly abbreviated as AGM, also known as the annual meeting) is a meeting that official bodies, and associations involving the general public (including companies with shareholders), are required to hold, either by law, or their constitution, charter, or the by-laws etc, which govern the organisation. An AGM is held every year to elect the board of directors and inform its members of previous and future activities. It is an opportunity for the shareholders and partners to receive copies of the organisation's accounts, to review fiscal information for the past year and to ask questions regarding the direction the organisation will take in the future.

Civil cases: Civil cases are cases between individuals, for example, where John borrows money from Jane, but does not repay her, Jane may institute a civil action against John.

Criminal cases: A crime is regarded as a wrongdoing against society. Although an individual may be the actual victim, the state takes over from the person who has laid a complaint with the police, and investigates the complaint and then decides whether to prosecute the alleged offender.

Common law: It is that part of the law that is derived from custom and judicial precedent rather than from statutes.

Constitution: The Constitution of South Africa is the supreme law of the country. It provides the legal foundation for the existence of the Republic, sets out the rights and duties of its inhabitants, and defines the structure of the government. The current Constitution, the country's fifth, was promulgated by President Nelson Mandela on 10

December 1996 and came into effect on 4 February 1997, replacing the Interim Constitution of 1993.

Customary law: Those rules that have developed from the habits of a community, and are so generally recognised and observed by the community that they are accepted as legal rules.

Justice Centre: A justice centre is a law office that offers free legal aid. Justice centres fall under Legal Aid SA. Legal aid is mainly given in criminal matters.

Law Clinic: Law clinics are part of law faculties of universities. Law students do practical training at law clinics. Just like justice centres, law clinics are also law offices that offer free legal aid to the poor in mainly civil cases. A number of law clinics also support Paralegal Advice Centres, by providing them with training and administrative support.

Law of Succession: The law that regulates how the property of a deceased person is inherited.

Legal Aid South Africa: Legal Aid SA provides free legal aid to the poor, which is determined by way of a means test, in especially criminal cases. It is funded by the government.

Master of the High Court: The Master of the High Court is a creature of statute and various Acts regulate the duties and powers of the Master. The Masters and their staff are specialists in the field of the administration of estates of deceased and insolvent persons, the protection and administration of the funds of minors, the supervision of the administration of companies and close corporations and the supervision of trusts in terms of the Trust Property Control Act, 1988. Their role in the effective and rapid settlement of these matters is essential. They have an ever-increasing scope of duties and an exacting workload.

Means Test: A means test helps determine if a person qualifies for legal aid from Legal Aid South Africa. The main factor the test takes into account is the income of the applicant. If his or her income exceeds the set threshold he or she will not qualify for legal aid. But the means test also considers the applicant's movable (cash and money-related assets) and immovable property. If the total of these assets is large enough to cover the expected legal costs, legal aid will be refused, even if the applicant has little or no income.

NGO: A non-governmental organisation (NGO) is a formalised, non-profit group which has been created outside of the government structure to address particular issues or to undertake particular tasks or functions of a non-commercial nature.

Non-Profit Company: A non-profit company is a company incorporated with at least one object of serving a public benefit, or for an object relating to one or more cultural or social activities, or communal or group interests and where the income and property are not distributable to its incorporators, members, directors, officers or related persons.

Paralegal: A paralegal is someone who has a basic knowledge of the law and its procedures. Paralegals refer certain cases to attorneys. Paralegals also know methods of dispute resolution alternative to court procedures, such as mediation and lobbying, to help solve the problems of their clients.

Profit Company: Capitalist economies are based on businesses that are mostly privately owned, and undertaken with the aim of generating profit for the benefit of the owners.

Reasonable person: The reasonable person (historically the reasonable man) is a legal fiction of the common law representing an objective standard against which any individual's conduct can be measured. It is used to determine if someone has acted as a reasonable person would have acted in the same circumstances.

Socio-economic rights: Also called second generation rights, these rights include the right to housing, the right to water and the right to an education. The state has a duty to provide access to these rights only in so far as its resources allow.

Statutory Services: Refers to services provided by the local authority.

STUDY UNIT 1

ESTABLISHING A PARALEGAL ADVICE CENTRE AND PREPARING ITS CONSTITUTION

1. LEARNING OUTCOMES

At the end of this study unit you should be able to:

- explain the concepts of paralegals and Paralegal Advice Centre;
- explain the role of paralegals and Paralegal Advice Centres;
- differentiate between the different types of paralegals and their roles;
- explain the process of establishing a Paralegal Advice Centre; and
- explain the process of preparing a constitution for a Paralegal Advice Centre.

2. INTRODUCTION

In this study unit we first explain what “paralegals” and “Paralegal Advice Centres” are, and the role they play in a community. In doing so, we start with the historical developments in South Africa which caused and led to the forming of the community-based paralegal movement. We look at how this role has changed from the time of apartheid to the current time. A step-by-step approach for the establishment of an advice centre is provided. Lastly the drafting of a constitution for a Paralegal Advice Centre is discussed.

3. PARALEGAL ADVICE CENTRES: A HISTORIAL OVERVIEW

3.1 SERVING THE NEEDS OF COMMUNITIES

The main role of Paralegal Advice Centres and paralegals is to serve the needs of communities. To have an understanding of Paralegal Advice Centres and paralegals in South Africa, we should thus first consider how the needs of communities especially poor ones, have changed since the time of apartheid to the present under a democratic system.

3.1.1 *Paralegals during apartheid*

During the apartheid era, paralegals were an important activist force in assisting victims of abuse of power against, for example, unlawful detentions and arrests. They also played an important role in the fight for the liberation of the majority black people, who were politically excluded by the unjust apartheid regime.

3.1.2 *Paralegals under the democratic system*

When South Africa became a democracy in 1994, the rights of inhabitants became protected in terms of the Bill of Rights contained in the Constitution, 1996 and there was no longer any need for protection against the abuse of power by the state. Instead, there was a need that the socio-economic rights and the access to justice of people be advanced.

However, despite the right to equality and the duty of the state to protect and support the rights of those who had been marginalised in the past, many South Africans remain disadvantaged. This is especially true with regard to communities who live in rural areas, former homelands and in townships.

Although the government started to provide previously marginalised communities with basic services like housing, electricity, and water and sewerage reticulation, after it came into power in 1994, the gap between the poor and the rich nevertheless grew considerably as did unemployment during this period. Violent protests against the lack of service delivery, corruption by officials, the perceived lack of the transformation of the South African society and continued inequality and injustices, are reminders that a lot must still be done before people will achieve freedom and equality. These situations have also influenced the role played by paralegals and the assistance that Paralegal Advice Centres need to offer to communities.

3.1.3 *Legal Aid in South Africa*

Access to social and economic justice is important to enable everyone to achieve equality. Since 1998 the state legal aid system has been changed considerably. Instead of paying private lawyers to handle cases on behalf of persons who qualified for legal aid, Legal Aid SA (previously called the Legal Aid Board of SA) established a considerable number of justice centres throughout the country. Justice centres are law offices staffed by attorneys, candidate attorneys, managers and support staff. Legal Aid SA handles mainly criminal matters.

In addition, there are law clinics and NGO's which provide legal assistance in mainly civil cases. With a few exceptions such law clinics and NGO's are usually situated in urban areas. With high unemployment and poverty and millions of South Africans living off grants, there are many areas in the country where legal services are affordable to only a few, or where no legal aid is available.

Paralegals thus continue to play an important role in advancing social, economic and political rights through the law and democracy to address the plight of the poor and the disadvantaged.

4. THE PARALEGAL SECTOR IN SOUTH AFRICA

Some of the institutions or associations that are relevant and important for the operation of a Paralegal Advice Centre include:

(a) The National Community Based Paralegal Association (NCBPA)

The National Community Based Paralegal Association (NCBPA) was established in 1996. The NCBPA's mandate was to promote and develop the work of affiliated community-based Paralegal Advice Centres and paralegals. Through a system of provincial paralegal associations, the NCBPA created a network aimed at increasing access to justice and promoting and advancing human rights. By 2002 there were approximately 250 Paralegal Advice Centres in the country with about 750 paralegals.

As a result of the apparent dissatisfaction by funders regarding the management of funds, the NCBPA effectively collapsed. This resulted in the collapse of national and regional structures.

Consequently paralegals found it difficult to co-ordinate their activities and to speak with one voice, especially about issues such as the status of paralegals and their role in the legal profession. This happened at a time when two important developments were taking place around the legal profession.

In August 2006 a *Draft Legal Services Charter* was published. The Charter was aimed at promoting economic, social and political justice through the empowerment of historically disadvantaged individuals by means of the transformation of the legal service sector. Paralegals were specifically included in the definition of "legal practitioners".

(b) A National Steering Committee

A National Steering Committee was established in 2005 at the initiative of international donors and various stakeholders involved in the paralegal sector. The Steering Committee took it upon itself to address considerable challenges in the paralegal sector, such as being a voice for, giving support to, and mobilising support and resources for paralegals and the community-based paralegal sector. Secondly, the first draft of the *Legal Practice Bill*, which mainly dealt with the regulation of and admission of persons to the legal profession, also included paralegals in the definition of "legal practitioners". One of the implications would have been that paralegals would be allowed to charge fees, like attorneys and advocates, and that they would be regulated by the same body that regulates the organised legal profession. These two draft documents caused considerable outrage amongst attorneys and advocates and led to heated debate.

- (c) The National Alliance for the Development of Community Advice Offices (NADCAO)

In February 2010 the National Alliance for the Development of Community Advice Offices (NADCAO) was established with the aim of providing for the development and long-term sustainability of community Paralegal Advice Centres (see URL <http://www.nadcao.org.za>).

So far, law clinics in the Eastern and Western Cape, North West and Free State have entered into cooperation agreements with Paralegal Advice Centres in their areas, and assist paralegals with their cases and office management and they also provide training for the paralegals. (As an exercise find the Paralegal Advice Centre which is closest to you on the NADCAO website).

Legal Aid SA, which is funded by government and provides free legal aid to poor people in mainly criminal matters, has committed itself to widening its impact and reach by forming partnerships with Paralegal Advice Centres.

Self-Assessment 1:

- (a) What was the main role of paralegals during apartheid?
- (b) Explain how the role of paralegals changed under a democratic SA.
- (c) Name three organisations which provide free legal aid in South Africa, and indicate for which type of legal matter they provide legal aid.
- (d) When was the NADCAO established and what was the main purpose of its establishment?

4.3 WHAT IS A PARALEGAL?

4.3.1 Basic definition

In South Africa a paralegal is someone who has sufficient knowledge and experience of the law to help people with their basic legal problems.

Depending on the nature of the problem, the paralegal can refer people to a lawyer, to a state protection body or another organisation that assists people with that particular type of problem. The paralegal is, however, also in the unique situation of being able to assist people to find a lasting solution for their legal problems, and in a position to use creative ways to achieve lasting solutions. A paralegal may not represent him- or herself as a lawyer. Since paralegals are not court practitioners, they tend to rely on alternative mechanisms for dispute resolution (ADR), such as negotiation, mediation and arbitration, rather than court litigation.

ACTIVITY 1:

We referred to the role of paralegals above. Before you continue reading, indicate which of the following persons you may regard as “paralegals” and why.

- (a) Vuyiswa has been employed by the Department of Social Development of his local council to assist families whose breadwinners are dying of AIDS;
- (b) Samuel is employed at a justice centre as an interpreter for lawyers who cannot speak the local African language and their clients who cannot speak English;
- (c) Johnnie is a messenger at a law firm and also makes tea and coffee for the lawyers;
- (d) Kabelo assists members of his community to access children's grants and also negotiates with municipal officials when the community has complaints about service delivery.

FEEDBACK TO ACTIVITY 1:

Samuel is a paralegal since he is involved in assisting in the legal field, and Kabelo is also a paralegal since he advises people about their rights.

Vuyiswa is a care giver and not a paralegal, and neither is Johnnie a paralegal since he does not advise people about anything relating to law.

4.3.2 *Types of paralegals*

There are many types of paralegals with different functions in South Africa today. These include the following:

- (a) **Community-based paralegals:** A community based paralegal works in a Paralegal Advice Centre which has been established with the purpose of serving the community. The majority of paralegals in South Africa probably belong to this group.
- (b) **Commercial paralegals:** Law firms are increasingly appointing paralegals to assist in running commercial law practices, the administration of estates and conveyancing.
- (c) **Justice centres and law clinics:** Paralegals assist in interpreting, applying the means test (in the case of the law clinics and justice centres of Legal Aid SA) and, where necessary, referring clients to other organisations.

- (d) **Community development workers:** Some municipalities employ paralegals as primary resource officers to act as a link between the community and the local council. These paralegals are called upon to resolve conflicts and advise the public on local government accountability, developmental issues, the relevant government department to approach to get assistance and disaster management.
- (e) **Criminal courts:** Paralegals are sometimes appointed as lay assessors, assisting magistrates in criminal trials in reaching a fair decision in these trials.
- (f) **Fieldworkers employed by service organisations:** Some NGO's, community based organisations (CBO's), research organisations and NGO litigation organisations (e.g. the Legal Resources Centre) employ paralegals to assist with various activities. Such activities include the following:
- monitoring human rights abuses;
 - taking down statements from communities in legal cases that involve groups of people (impact litigation) against the state or private companies;
 - participating in impact studies by interviewing people on matters involving communities; and
 - interviewing people in order to collect evidence required for charging companies at the Competition Tribunal regarding price-fixing or other abuses that affect consumers.
- (g) **Debt Counsellors:** Paralegals, who have received special accredited training, provide debt counselling services in terms of the *National Credit Act 34 of 2005* to consumers who are unable to repay their debts, due to their financial position.
- (h) **Alternative Dispute Resolution (ADR) services:** the *Consumer Protection Act 68 of 2008* has created further opportunities for paralegals to provide conciliation, mediation or arbitration services in the resolution of consumer disputes and for referring matters to the Commission.

Examples of how some Paralegal Advice Centres have dealt with various issues in the past:

Example 1: The Clan William Paralegal Advice Office has successfully negotiated with farmers on behalf of farmworkers and mediated between farmers and farmworkers, thereby doing away with the formal CCMA and ESTA procedures.

Example 2: In the Indwe district many old age pensioners and young mothers with children were unable to access grants as they had no valid ID's. After discussions with the regional office of the Department of Home Affairs, the Indwe Legal Advice Office & Development Institution managed to persuade Home Affairs to visit Indwe regularly with a mobile office which could process applications for ID's and other important personal documents.

4.3.3 *Matters which a paralegal may NOT handle*

A paralegal is prohibited by law from handling any of the following matters:

- I. drafting a will;
- II. signing a summons or any other court document; and
- III. drafting an agreement for the sale of both movable or immovable property.

Self-Assessment 2:

- (a) Name three types of matters which a paralegal is **not** allowed to handle.
- (b) Name five different types of paralegals and provide a short description of the role of each of them.

5. A PARALEGAL ADVICE CENTRE AND ITS ROLE IN THE COMMUNITY

Paralegal Advice Centres in South Africa help people to understand the law and to solve problems that involve the law and human rights. Community based Paralegal Advice Centres play an important role in ensuring that marginalised communities achieve access to justice, even those communities in the furthest flung areas in South Africa.

Before we discuss how Paralegal Advice Centres serve the community, we would like you to look at your own experiences and what insights you have gained.

Self-Assessment 3:

Before continuing, consider the following questions and give your personal opinion, based on the knowledge you have gained:

- (a) List the roles you think community-based Paralegal Advice Centres should play to address the needs of their communities.
- (b) Do you think that Paralegal Advice Centres in South Africa and in your region are achieving the various roles you have listed above?

In direct response to the needs of their communities, Paralegal Advice Centres are generally engaged in all or some of the following activities:

- (a) Basic legal advice

Paralegal Advice Centres play an important role in giving basic legal advice to people, thereby ensuring that their rights are protected. Where necessary, they refer legal matters to attorneys with whom they work, for instance attorneys attached to law clinics or justice centres. In employment disputes (particularly unfair dismissals), Paralegal Advice Centres may assist clients to complete application forms in order to have their cases dealt with by the Commission for Conciliation, Mediation and Arbitration (the CCMA).

Assistance can also take the form of referring clients who have certain legal problems to the appropriate government department or protection agency, such as:

Legal Problem	Referred to:
How to deal with the estate of a deceased	Master of the High Court
Disputes between pensioners and their pension funds	The Pension Fund Adjudicator
A consumer dispute	A court (if the value in dispute is less than R12 000, to a small claims court) the Consumer Tribunal or to an accredited alternative dispute resolution agent
A problem with a government official or department	The Public Protector
A complaint against a police officer	The Independent Complaints Directorate
Human rights abuses	The Human Rights Commission
Hate speech based on race, gender, sexual orientation or country of origin	The Equality Court
Complaints against a bank	The Banking Ombudsman
Injuries sustained or death resulting from a motor vehicle accident	An attorney or the Road Accident Fund

Figure 1: Different government departments to which matters can be referred

(b) Dispute resolution

With the use of negotiation or mediation, Paralegal Advice Centres are in a good position to assist in resolving disputes between members of the community or between the community and government officials. Mediation requires special skills, a good understanding of people and the ability to remain neutral and unemotional.

(c) Assisting people to access services by the State

Millions of people are dependent on state grants and -pensions. Resulting from a combination of red tape, inefficiency and incompetence, grant or pension beneficiaries are sometimes deprived of their benefits. There has been a steady increase during the past few years in incidences of often violent protests against poor service delivery or neglect. Paralegal Advice Centres can play an important role in diffusing such situations through a variety of methods.

Such methods may include the following:

- ❖ negotiating on behalf of the community;
- ❖ mediating between the community and the state organisation;

- ❖ lobbying with government officials or politicians, including members of the National Assembly, the Minister or Chairperson of the relevant portfolio committee;
- ❖ approaching the office of the Public Protector; and
- ❖ organising petitions.

(d) Assisting with employment creation

Paralegal Advice Centres can assist in the development of communities by helping them to establish organisations through which people can acquire skills and generate employment and income. Paralegal Advice Centres render developmental assistance in various ways including the following:

- ❖ giving advice on the various legal structures that can be used to regulate community groups;
- ❖ drafting of a constitution for the legal structure chosen, advising and providing training on accountability, the functions and powers of office bearers, financial management and budgeting;
- ❖ the registration with Department of Social Development as NPO; and
- ❖ fundraising and the writing of proposals.

(e) Community education

The successful achievement of the values set out in the "Founding Principles" of the Constitution supposes that communities have the necessary knowledge of its content, the meaning of rights and the application of rights to everyday situations. When it comes to laws and legal rights, there is a supposition that a prior understanding of such rights will often prevent people from having legal problems in the first place. See for example the Sowetan article on the "Contribution to the moral fibre" at URL <http://www.sowetanlive.co.za/columnists/2012/01/19/sa-s-sinking-moral-fibre>.

The high incidence of murders, sexual and domestic violence and intolerance and discrimination based on race, HIV status, gender and sexual orientation, culture and class, indicates a disturbing lack of acceptance of the values of South Africa's constitution and the norms of society. Mere knowledge of rights and responsibilities cannot be sufficient to bring a change in behaviour. The acquisition of knowledge must go hand in hand with the process of instilling (inculcating) such knowledge. Inculcation presupposes a process through which information is analysed critically, where there is an honest exchange of ideas and opinions within an environment that supports respect and tolerance of the opinions of others. Paralegal Advice Centres can play an important role in informing and engaging communities in contentious issues and in inculcating respect and tolerance of the views of others.

Self-Assessment 4:

Can you think of any recent activities where there was an exchange of ideas and opinions within an environment which supports respect and tolerance of the opinions of others? See the URL link - https://www.google.co.za/#hl=en&sclient=psy-ab&q=mentally+handicapped+girl+gang+raped+south+africa&oq=mentally+handicapped+girl+gang+raped+south+africa&gs_l=hp.12. What will the Constitutional rights be regarding these recent activities?

ACTIVITY 2:

You are running an advice centre and you come across the following problems in the community:

1. Nosaphi's mother passed away three years after her father had died. Her brothers and sisters are fighting over who should inherit the RDP house and the furniture;
2. The municipal manager in your local municipality has been awarded a pay increase of 30%, bringing his annual salary to R1,5 m. The community is extremely angry. They claim that the municipality has neglected the roads and water supply in the township. People are saying that the municipal officials only care about becoming rich whilst they ignore the plight of the poor. Tempers have flared alarmingly and you hear that a group of youngsters are planning to burn down the municipal offices and the houses of the municipal manager, mayor and councillors.
3. Domestic violence and rapes have increased alarmingly during the past few years. A group of community members approach you for help to address this problem;
4. The Department of Social Development has stopped paying disability grants. When people complained, the official said: "There are no funds left". Thirteen disabled people in your community are affected;
5. Unemployment in your small rural community is said to be as high as 65%. A few years ago, a brick factory, which employed 250 people closed down due to the economic downturn in the region. A few people are employed in shops, surrounding farms and small government offices. A group of community members has decided to do something about the situation and approach you for advice.

With regard to each of the problems above,

- (i) mention which method you would use to address the problem;
- (ii) describe how you would go about addressing the problem. Include the strategy you would use to achieve your objective, who or which office you would approach, whether you would do it on your own or get help from someone, and if you will get help, which type of person or organisation you would approach.

It will be far more valuable to you if you try and do this activity on your own, before looking at the feedback.

FEEDBACK TO ACTIVITY 2:

Problem 1: this is a dispute about the law of succession (the right to inherit). One would first approach the nearest office of the Master of the High Court to find out whether the death of Nosaphi's mother has been registered as is required by law and, if so, whether she had a will.

Since the case also involves a RDP house, one could also, in addition to the Master's office, seek help from the Housing Department of the municipality or Regional Council;

Problem 2: this problem suggests different methods of addressing the dissatisfaction of the community about lack of service delivery, maladministration and possibly even corruption.

Firstly, one could lodge a written complaint with the Public Protector, who has the duty to investigate maladministration by government departments and officials, including the lack of service delivery and corruption. This procedure usually takes rather a long time;

Secondly, the advice centre could assist the community in arranging an urgent meeting with the municipal manager, the mayor or counsellors. If this fails then a meeting with the MEC for Local Government may have to be arranged. This method may be more effective than approaching the Public Protector, in view of the urgency of the matter and the anger of the community;

Problem 3: Domestic violence and rape are crimes in which women are usually the victims. These crimes can have different causes which need to be addressed at different levels.

Firstly, the problem could lie with men, and an increase of crimes by them against women, could indicate a certain attitude against women by the men in that community. This could best be addressed through workshops for men regarding women's rights and on restoring traditional values;

Secondly, the problem could lie with women themselves: their attitudes towards themselves or their having a feeling of being helpless and powerless against rape and assault by men. Again, one of the ways of addressing this could be by workshops for women to teach them their rights and to empower them by teaching them assertiveness skills. To facilitate such workshops one could approach the Human Rights Commission or a number of NGO's in South Africa, that specialise in the promotion of rights.

Thirdly, if the problem seems to be the attitude of local male police officers towards female victims of rape or domestic assaults, then this could be addressed by organising a meeting with the local station commander of the SAPS or even with the MEC for Safety and Security. One could also lodge a complaint with the Independent Complaints Directorate or a Member of Parliament.

In any case involving complaints against government officials, it is important that signed statements are collected from those affected, which give details of what happened and the name and rank of the government official.

Fourthly, if the problem is caused by bad court administration that prevents cases from being prosecuted, one could meet with the chief prosecutor of the local magistrate's court or with the provincial head of the National Prosecution Authority.

Problem 4: This case is clearly about an administrative decision made by an official of the Department.

Firstly, one could meet with either the head of the nearest regional office or with the provincial head, the Director General or even the political head of the provincial government of the Department (for example, the Minister); Secondly, one can approach the Public Protector;

Thirdly, one can approach a law clinic or the Legal Resource Centre to take legal action against the department (the Legal Resource Centre in Grahamstown successfully instituted action for the same type of matter as in the problem against the provincial department);

Problem 5: this is not a legal problem, since nobody has contravened the law. This problem is typical of many small communities in rural areas. It seems as if very little will be done by either the government or the business sector to improve the situation. Unless the community is proactive and comes up with creative ideas to create employment, the situation will probably get worse over time. Some of the methods and solutions to address the problem could include:

Firstly, organising a meeting between community leaders and the local business sector to try and find ways of creating more jobs or attracting more businesses to the area;

Secondly, approaching government departments that are involved in community development and the creation of employment, such as the Centre for Small Business Promotion (which falls under the Department of Trade and Industry), and the National Development Bank; and

Thirdly, assisting a group of community members to set up a legal structure and to register it as a NPO (see paragraph (d) above and Study Unit 3 below).

6. THE PROCESS OF SETTING UP A PARALEGAL ADVICE CENTRE

The task of establishing a Paralegal Advice Centre is not an easy one and involves a number of challenges. It is however also exciting to be part of a project which will hopefully end up improving the lives of many in your community.

There are different ways of setting up a Paralegal Advice Centre, but they all share more or less the same basic steps. We shall now discuss a number of steps to be followed in establishing a community-based Paralegal Advice Centre.

(a) Being clear about the reasons for establishing an Paralegal Advice Centre

There are different reasons which motivate communities to open Paralegal Advice Centres. The main motivation or reason should always centre on the “needs of the community”. It should not be established in order to benefit a few individuals (for instance, by creating employment opportunities for them) or to create a power base for individuals or political parties.

(b) Establishing a steering committee to guide the process

As will be seen below, if done properly, the process of establishing a Paralegal Advice Centre is onerous, involving wide consultations and making contact with organisations or government offices that may be of assistance. It is thus strongly advised that first of all a steering committee is elected to smooth the way and provide guidance in setting up the Paralegal Advice Centre. The steering committee should ideally consist of members of the community, who are influential and who have contacts with important role players (see sub paragraph (d) below). The steering committee will give credibility to the process and ensure that there is a direct link with the community during the process.

(c) Establishing the needs of your community

We emphasised above that the activities of a Paralegal Advice Centre should be directly linked to the actual needs or the social or legal problems of the community it serves. This requires a basic needs analysis. The following three questions must be answered:

- (i) What are the main needs or problems which need to be addressed in your community?

Each community has its unique problems. Some problems are restricted to certain regions. For instance, in many rural areas there is uncertainty about the law of succession, particularly whether customary law or civil law applies to people married in terms of customary law. There are, however, also problems which occur throughout a region, province and even the whole country. On a national level, for instance, there are problems with the following:

- service delivery;
- high rates of sexual abuse of women and children;
- high rates of domestic violence;

- the abuse of the rights of people infected with HIV;
- dissatisfaction with the lack of employment opportunities by the youth;
- illegal micro- lending practices; and
- labour matters including unfair labour practices, unfair dismissals and discrimination in the workplace.

(ii) What causes the needs or problems identified in your community?

In order to decide how the advice centre can address the needs and problems identified in the previous paragraph, it is essential to ascertain why the problems occur in the community. Sometimes the causes are difficult to understand for someone who is not an expert in a particular field and at other times the answers are obvious. For instance, many micro-lenders still insist on keeping the bank cards, identity documents and even the pin numbers for the bank accounts of the people to whom they lend money. It is quite obvious that they do so out of greed, knowing that people are not aware of their rights. So, one of the reasons for this practice is the ignorance of people about their rights.

Another example is unemployment. Unemployment can result from a combination of factors, including: lack of employment opportunities, problems with the standard of education as well as a lack of financial aid for school leavers to study at universities or technical colleges.

(iii) How can the identified needs or problems be solved by establishing a Paralegal Advice Centre?

Here the concern is whether the problems and needs can be addressed by a Paralegal Advice Centre. In paragraph 5 above we looked at the five most common functions of advice centres, namely giving basic legal advice, dispute resolution, assisting people to access services from the state, development assistance and community education.

If the problem identified is, for example, that there are many children living without parents due to the high level of terminal diseases, the Department of Social Development and NGO's specializing in child-headed households can get involved. A Paralegal Advice Centre does not deal with this type of problem.

ACTIVITY 3:

Following the 'three-step' approach, look at the situation in your own community and prepare a brief plan in which you record:

- a) What the main problems are;
- b) What you think the main causes are for each of those problems;
- c) Which of the problems you think can be addressed through the advice centre you propose to open and how the centre would go about addressing them?

This exercise should help you to determine whether there is a need to establish an advice office in your area.

FEEDBACK TO ACTIVITY 3:**(a) The Problems**

- You should not only concentrate on any legal problems, but also on those that are of a social and economic nature. Although social and economic problems may lead to legal problems, it is important to identify the actual problem first;
- Examples of typical problems in communities in South Africa are given in 1.5.3 above. There are, however, many others not included in that list.

(b) The causes of the problems

It is important to have a clear understanding of what causes a problem to be able to find a solution. For instance, in Activity 2, no 3, we saw that domestic violence and rape may be caused by different factors (the attitudes of males, the lack of knowledge of their rights and a lack of assertiveness amongst female victims, as well as the attitude and incompetence of police officials, etc.).

(c) Problems which a Paralegal Advice Centre can address

Here it may be useful to refresh our memory on the various functions of Paralegal Advice Centres mentioned above.

(d) Involvement of the community

The next step in the establishment of a community based Paralegal Advice Centre is to get the community involved.

In Study Unit 3, we will learn how to register a Paralegal Advice Centre as an NPO. It is thus clear that an advice centre should not be regarded as a moneymaking scheme for individuals or a group of people nor should it be established to create jobs for the unemployed (although a centre could have the creation of employment as one of its objectives if there is a need for that in the community). As mentioned previously, the work of a community-based advice centre should directly address the needs or problems of the community. The community should also be involved in the decision whether and how a centre should be established.

After the needs of the community have been identified (see paragraph (c) above) it is important to hold consultations with the community and the community must elect a group of people to guide the process of establishing the Paralegal Advice Centre.

Each community has its own dynamics and influential people. Examples of community leaders are: traditional leaders, spiritual leaders, co-ordinators of existing NGO's and CBO's, social workers, health practitioners and principals of schools. Ward counsellors may also be community leaders, but it is suggested that one should strive to remain politically neutral and guard against the Paralegal Advice Centre being confused with the ward office of a specific political party by the community.

- (e) Approaching individuals, organisations, government departments or institutions for assistance

There are numerous people and organisations that can be of help in establishing an advice centre. Some of them could be approached for cash donations, premises or office furniture and equipment. Others may be useful for networking, if they pursue the same objectives. It is thus useful to make contact and forge relationships at an early stage with such people, organisations and government departments or parastatals which can both add value to the operations and provide resources for the advice centre (See Black Sash 2008 *Paralegal Manual* at 597).

The table below provides some useful contacts which may also be considered: (See URL <http://www.nadcao.org.za/>)

Attorneys and Legal Aid Institutions:

- Local firms of attorneys
- The nearest University-based law clinic
- The nearest justice centre of Legal Aid SA
- Legal Resource Centre (LRC)
- ProBono.org

Government departments (examples):

- The local municipality
- The Police
- The Regional or local offices of the Departments of Justice, Health, Social Services and Development, Trade and Industry, Traditional Affairs, Local Government, Home Affairs, Land Affairs, Safety and Security, Women and Children's Affairs etc.

State Institutions:

- The Public Protector
- The Independent Complaints Directorate
- The Family Advocate
- The Consumer Commission etc.

Figure 3: Organizations/institutions which can be contacted

Useful Contacts for Paralegal support:

- Paralegal Training institutions: there are a number of institutions which are accredited with SASSETA (Safety and Security sector Education and Training Authority) to provide training for a paralegal diploma, including Isa Pele and various Universities

Figure 4: Useful Contacts for Paralegal support**Self-Assessment 5:****Useful contacts in establishing an advice office:**

Draw up a full list of individuals and organisations and government departments whom you would approach for assistance or guidance in establishing a Paralegal Advice Centre in your own area or region.

Indicate how you would like them to contribute, e.g. by donating cash, by donating office furniture or equipment.

7 A CONSTITUTION FOR A PARALEGAL ADVICE CENTRE

Now that we have discussed how to establish a Paralegal Advice Centre, it is important to consider how the important decisions about the aims, purposes and strategies of the centre can best be recorded in a document, called a constitution, so that they become binding on both members and the centre's leaders.

7.1 THE BASICS OF A PARALEGAL ADVICE CENTRE'S CONSTITUTION

The constitution of an advice centre provides a comprehensive blue print on how the centre must operate. A constitution is a set of rules which regulates how the Paralegal Advice Centre will function and it governs the different structures of that centre. The constitution should include all the important points on which members of the organisation have agreed regarding the operation of the organisation. The constitution also gives clarity to any person or organisation which has to deal with the advice centre, on what it may or may not do and also what the powers of its leaders are. The constitution is also referred to as the "founding document" and, once approved by the members; it is legally binding on both the executive and members.

7.2 THE IMPORTANCE OF A CONSTITUTION FOR A PARALEGAL ADVICE CENTRE

- (a) A constitution should be regarded as a long-term document as the organisation outlives its members and office bearers. It provides clarity and instils confidence that an organisation will be properly run;
- (b) An organisation with a constitution adopted by its members, has the right to register as a NPO. As will be seen in Study Unit 3, registration as a NPO ensures that such organisation enjoys certain rights and privileges;
- (c) The process of drafting a constitution provides an opportunity for the organisation's members to have a say in deciding what the centre will be about and how it will be run;
- (d) A constitution helps both the organisation's members and outsiders to understand its purpose, rules, and the rights and responsibilities of the members and office bearers. This, in turn, increases the confidence people have in the organisation;
- (e) A constitution should contain rules which guide members should there be a dispute about important matters like accountability and financial management;

- (f) Organisations sometimes decide to close down for various reasons. A constitution deals with how an organisation should be dissolved/closed and what to do with its assets after dissolution.

7.3 MAIN ELEMENTS OF A CONSTITUTION

1. The Name of the Paralegal Advice Centre
2. Its aims and objectives:
Here the following should be considered:
 - (a) What are the *immediate goals* of the Paralegal Advice Centre
 - (b) What are the *broader aims* of the Paralegal Advice Centre
3. Membership:
Membership allows the community to participate in the Paralegal Advice Centre's affairs. This is especially important in the case of community-based Paralegal Advice Centres. Here one should consider:
 - (a) Who may join
 - (b) What should the duties and privileges of members be
 - (c) Should members have to pay a membership fee
 - (d) How can membership be terminated
4. The management structures and decision-making:
The chosen management structures must be effective and must ensure proper accountability. Here one should consider the following:
 - The management structure of the centre
 - How office bearers will be elected
 - How the person managing the centre (manager/coordinator) will be appointed and by whom
 - What powers and duties each structure and the manager should have
 - To whom the structures and the manager will be accountable

Examples of structures:

- (i) A general meeting of members, including an Annual General Meeting (AGM)
 - (ii) An Executive Committee or a Management Committee
- The type of office bearers the organisation will have, for example whether the Executive Committee will have office bearers such as a Chairperson, Secretary and Treasurer
 - Sub-committees
 - Decision-making, which includes the following:
The powers and duties of each structure, i.e. what they are allowed to do and what not to do

5. Meeting procedures:
Meetings of management structures are very important to an organisation. This is where important decisions are made or where decisions taken are ratified. Some of the provisions regarding 'meetings' which should be considered are the following:
- Who will chair meetings
 - The notice period required for certain meetings and whether such notice should be in writing
 - What quorum is needed to render meetings properly or validly convened and to ensure that decisions taken are valid. Quorum means that a certain number of people must be present for the meeting to be valid. There are two types of quorums, one for a meeting to be valid and one for determining how many votes are needed to carry a valid vote. For instance, a quorum could be two-thirds of the total number of members on the committee to validly carry a decision
 - Agenda: what type of matters should be included in the agenda.
 - How voting should take place. Should it be by a show of hands or by secret ballot
 - The recording of minutes: how minutes should be recorded and approved
6. Election of office bearers:
- In which structure or level should office bearers be elected. Whether they should be elected by the general meeting of members or by the executive/management committee
 - How office bearers should be elected. By verbal nomination and a show of hands, or by way of nomination forms and ballot papers
 - How the results of the voting procedure should be announced
 - How vacancies on the executive/management committee should be filled
7. Staff of the Advice Centre:
- How should the staff be appointed
 - What type of positions should the centre have (for example, a coordinator, administrator and a fieldworker)
 - What the duties of each position are
 - To whom they are accountable (for instance, the administrator and fieldworker accountable to the coordinator and the coordinator to the management committee)
 - How the coordinator should report on her/his tasks and activities
8. Discipline:
- The kind of behavior that is expected of members, office bearers or staff
 - The kind of behavior which is unacceptable
 - The procedure that should be followed if someone's behavior is unacceptable
 - The formalities for holding a disciplinary hearing: for example that written notice must be sent to the person concerned
 - Who will chair the disciplinary hearing

- The right to appeal against the verdict by the disciplinary committee and who will hear such appeal
- The types of punishment that people who have been found guilty may receive

9. Financial controls:

- Who is responsible for keeping financial records
- To whom is such person accountable: for example to the Management Committee
- Who may sign cheques or documents required for other banking transactions: for instance the Coordinator together with the Treasurer or Chairperson of the Management Committee
- Who has to approve withdrawals from the banking account
- Who will draw up the financial statements
- How often do the financial statements have to be submitted to the controlling structure
- What is the financial year-end of the Centre
- When and to whom do audited statements have to be submitted? For example to the Annual General Meeting of members

10. Amendments to the Constitution:

- How should a member or members wishing to propose an amendment to the constitution have to go about doing so? For example, by giving notice in writing to all the other members giving both details and reasons for the proposed amendments
- What percentage of the membership is needed to vote in favour of amending the constitution

11. Dissolution of the Centre:

- What are the formalities for dissolving (ie terminating) the organisation
- What percentage of members is needed to vote in favour of dissolving the organisation
- What decisions must be taken with regard to the organisation's assets and liabilities
- The appointment and duties of a liquidator (the person who administers the dissolving of an organisation)

7.4 GUIDELINES ON DRAFTING A CONSTITUTION

The Constitution should be drafted in clear and simple terms so that it can be easily understood by the members and the general public. This means that complicated legal terminology should be avoided.

The drafting of a constitution requires a good insight into how a NPO should be run. There are a number of aids that you can use in approaching this (for example: <http://www.etu.org.za/toolbox/docs/building/guide.html>; "Paralegal Manual 2008" Published by the Education and Training Unit of the Black Sash).

These matters must be carefully discussed in order to see whether they are appropriate for the needs of the community. This means that an organisation can exist for some time before it is ready to finalise its constitution. A draft constitution can be discussed with the various stakeholders and then finally approved and adopted by the organisation's highest decision-making body.

ACTIVITY 4:

- (1) Name five reasons why it is advisable for an advice centre to have a constitution.
- (2) What is another word for a constitution?
- (3) Give two examples of different management structures for an organisation.
- (4) Give three examples of office bearers.
- (5) Give five examples of how an organisation can ensure that its finances are properly managed and that those handling the finances are held properly accountable.
- (6) What should happen on dissolution of an organisation?

FEEDBACK TO ACTIVITY 4:

Study paragraph 7 (7.1-7.4)

8. CONCLUSION

What you have learnt could become really alive by you actually visiting existing NGO's (and especially Paralegal Advice Centres) and talking to them about why and how they were established, whether they have a constitution (ask them for a copy and see what they have included) and what their main challenges are.

To put into practice what you have learned in this study unit we suggest that you find an advice centre in your area (use the interactive tool on the <http://www.nadcao.org.za> website) and ask them the following:

- Why and how they were established.
- For a copy of their constitution, if they have one; and
- About their main challenges.

9. SOURCES

- FS Jenkins "The budget process and strategic civic interventions" in *Mobilising Social Justice in South Africa* (Jeff Handmaker and Remko Berkhout (eds) PULP 2010 at 41.
- 'Justice for All: Law Clinics in South Africa. And in Sweden?' Dan Bengtsson 2002 (unpublished thesis) at 28.
- See unpublished "Report on the State of Community-based Paralegal Advice Offices in South Africa", J. Bodenstein/ National Steering Committee/ ICJ (Sweden) (2007) at 8.

- Unpublished discussion document “*Draft Legal Services Charter*” at 6 &7. See also “*Discussion Paper: Transformation of the Legal Profession*”, by the Policy Unit, Department of Justice and Constitutional Development, (September 1999).
- “*D-day looms for the Legal Practice Bill*” *De Rebus* October 2001.
- “Paralegal Manual 2008” published by the Education and Training Unit of the Black Sash (pages 557-559; 596-597).
- <http://www.etu.org.za/toolbox/docs/building/guide.html>.
- <http://www.nadcao.org.za/>.

STUDY UNIT 2

THE BUDGET AND BUDGETING PROCESS FOR A PARALEGAL ADVICE CENTRE

1. LEARNING OUTCOMES

At the end of this study unit you should be able to:

- Prepare a budget for an advice centre.
- Identify categories of expenditure and income.
- Identify specific and generic items to be included in the budget.
- Prepare different types of budgets for an advice centre.
- Demonstrate a working understanding of the link between the planning and budget processes.
- Understand the importance of fundraising in order to run an advice centre.
- Know how to raise funds.
- Know the purpose of audits and what is needed for a successful audit.

2. INTRODUCTION

This study unit introduces the concept of budgets, the importance of budgets and the different categories of expenditure contained in a budget. Furthermore, it explains the important link between the plans of the advice centre and the budget.

3. WHAT IS A BUDGET?

A budget is very important as it is basically a financial plan, indicating the amount of funds you envisage to receive for work you have done and from donations and where, when and how you plan to spend such funds.¹ Management as well as prospective funders can thus gauge from the budget whether they have developed a well thought out and researched plan of income and expenditure for the particular paralegal advice centre.²

When compiling a budget, you must start by estimating you think you will need to spend as against the available funds. Budgets can be simple to cover a specific activity, such as a single workshop or a specific project or programme, or to cover all expenses, including the running of a centre and all its projects.

A budget is also an important monitoring tool. By regularly monitoring actual income and expenditure against a budget, one will be able to establish whether the organisation is under- or over spending and how it is using the funds to obtain the resources (people, equipment and services) it needs to meet its objectives.

¹ Symes C (2002) *The New Toolbox: A handbook for Community Based Organisations, Vol 4 Managing Money and Fundraising* at 6.

² Morne Mauritz (2005) "Financial Management" in *Handbook Series for Community Based Organisations* at 9.

The various uses of budgets and the budgeting process:

- They help your organisation to plan and to focus on each planned activity and to estimate how much they will cost to undertake;
- A sound budget provides a direct link between (a) the objectives of the advice centre and thus what it wishes to achieve; (b) the planned activities over a planned period; and (c) the costs of such activities and thus of achieving the objectives;
- They provide a target against which to compare results;
- They outline whether you can actually afford to do what you want to do;
- They show a funder what you want to do; and
- They help you to make the best use of resources.

Figure1: Budgets and the budgeting process**4. THE BUDGETING PROCESS**

The budgeting process is the process followed by the advice centre to compile a budget and to ensure that all foreseeable expenditure and income is taken into consideration to determine how much money will be needed to operate the centre.

4.1 PREPARING BUDGETS FOR AN ADVICE CENTRE

There are no set rules about what a budget should contain. Some funders may provide guidelines and it is always advisable to ask potential funders whether they have guidelines or preferences. What is important is that a budget does not stand alone, but must necessarily be linked to a plan of action which, in turn must be linked to the advice centre's objectives. The action plan and budget should cover the same time period.

For the purpose of budgeting for an advice centre, we shall differentiate between:

- (a) An organisational budget providing for the general running expenses of the advice centre and for the planned activities; and
- (b) A budget for project-specific activities. Many advice centres decide to take on other projects other than providing general advice. Such projects can for instance include community awareness campaigns, providing advice in developmental aid or acting as agents for government agencies or donor organisations. Project-specific budgets are normally prepared in response to a tender or invitation by funders to bid for conducting specific projects.

Suggested method and sequence in developing a budget:

1. Identify and outline the centre's objectives for the budget period.
2. Identify all activities proposed to be conducted during the budget period.
3. Ensure that the activities (in point 2) are aligned with the plans and objectives (in point 1).
4. Identify the amount needed for each activity.

Figure 2: Method and sequence in developing a budget**4.2 THE TIME PERIOD THE BUDGET WILL COVER**

Budgets can be drawn up for different periods, for example for the duration of and coinciding with the financial year end of either the advice centre or of the funder; for a specific period (for instance for six months); for a single activity (as for instance for a specific workshop or conference) or specific project (for example a series of community workshops). The period covered by the budget must be clearly stated. It is thus possible to have different budgets running with different time periods in one organisation.

The time period chosen for a budget also determines the extent of inflationary increases of running costs or overhead costs like rental, electricity and water, stationery etc. This will be discussed in more detail below.

5. BUDGET DESIGN

As indicated above, it is important to have a plan at hand for either running the whole organisation or for the specific project before designing a budget. The basic principle of budgeting requires an organisation to secure funding for everything it wishes to achieve and for every activity in which it wishes to engage during the period of the budget.

5.1 THE INITIAL BUDGET FOR STARTING A NEW PARALEGAL ADVICE CENTRE

When preparing a budget³ for the first time you should identify sources of income and categories of expenditure, which are in line with the plan and which provide for the funding of both basic centre expenses and for specific activities or projects.

5.1.1 Start-up costs

When a centre is established, there will be initial or start-up costs, which necessarily have to be incurred before the centre will be able to start operating. Typically, start-up costs include the securing of premises for the centre, telephone installation, furniture and office equipment such as computers, photocopier, printer etc.

³Beatie Hofmeyr (2005) *Paralegal Manual* at 523.

5.1.2 *Income*

You must identify all possible sources of income for the particular plan you intend to implement with the budget you are compiling. Income can be derived from a variety of sources, including core funding grants, project grants, events grants, donations or contributions from organisations or individuals and also from fundraising. Core funding grants are grants that fund the core activities of the centre only; such as the funding of the salaries of employees and organisational running expenses. Donations can be made for a specific purpose for example for the buying a computer. Project grants are project specific and the funds are only used for expenditure on a specific project for which funds are allocated. Events grants are grants for specific events like a sports day. The budget may be based on a single grant or on several funding sources.

Prospective donors like to see that there are other sources contributing to the project they are also funding. Some donors make funding conditional on the beneficiary raising a certain percentage of funding from other sources. It is thus important to be clear at the beginning of the funding process what exactly the funder expects from the advice centre. A successful fundraising strategy should thus target a wide variety of potential funding sources.

Funding can either consist of monetary contributions or funding in kind. Examples of "funding in kind" are the following:

- Free or subsidized rentals by the owner of the premises to be occupied;
- Donations of centre furniture and equipment

5.2 **HOW TO DETERMINE WHICH ACTIVITIES NEED TO BE FUNDED**

Look carefully at your plans and list how much you think it will cost to run each particular activity. This means identifying the people, supplies and equipment needed and the amount of time it will probably take to do it.

For example: You are required by one of your funders to host a conference that will take place over two days. You are to provide lunch and refreshments during tea breaks as well as a white board stand and paper for the presenters to write on. They also require pens and paper for the delegates. It is also expected of you to arrange a venue and to find presenters for the conference.

Your plans for this conference will include the hiring of a venue with the necessary equipment that is needed (the whiteboard, paper and stationery for the delegates), and a caterer for the lunches and refreshments during breaks. You will also need to provide accommodation and meals to your presenters if they are coming from out of town. All these aspects must be included in your budget so that you can calculate the total cost of the conference.

5.2.1 *Estimating expenditure*

Calculating budget items becomes easier with experience. This process should however never be taken lightly. Estimated expenses should never be based on 'wild guesses' as this practice does not only make a mockery of financial planning, but will also create a bad impression on funders, who generally have a sound idea of the cost(s) of items or services. Certain expenses, for instance rental agreed upon with the landlord, are predictable. Be aware that costs may change over a period of time and make sufficient allowance for this. In some cases the calculations may be more complicated and may need to be estimated based on the previous year plus a certain % (for example the expenditure on this item in the previous financial year plus 10%) or on information and advice from other Community Based Organisations or on quotes from potential suppliers. Funders generally prefer more rather than less detail on how estimated costs were arrived at.

5.2.2 *Budget Categories*

There are essentially three kinds of costs⁴: fixed costs, variable costs and once off costs (or capital costs):

Fixed Costs: these are the costs that will not change no matter what activities the organisation undertakes.

Fixed costs such as the rent of centre space or the rental of equipment for the centre, for instance a landline or cell phone, fax machine, photocopier or computer, will stay the same no matter what happens with your activities; whether the centre is used for two or eight hours a day, these costs remain the same.

Variable Costs: These costs are determined by the nature and extent of the activities of the advice centre.

⁴ Symes C (2002) *volume 4 Managing Money and Fundraising in The New Toolbox: A handbook for Community Based Organisations* at 7.

Example of how one activity can influence the variable costs of an advice centre:

The Putfontein Advice Centre mainly provides advice to members of its community on welfare, consumer and employment matters. A file is opened for every new matter. Having identified an increase in consumer-related problems in the Putfontein community, the advice centre decides to embark on an awareness campaign on the Consumer Protection Act. The paralegals attend a training workshop offered by a law clinic and sponsored by international funders. The advice centre manages to conduct awareness workshops without incurring any costs.

The direct result of the awareness campaign is that, having been informed of their consumer rights in terms of the Consumer Protection Act, an increasing number of community members approach the advice centre for advice and assistance. This directly results in the following additional expenditure:

- Stationery, as more files are being opened;
- Photocopying, as more forms and documents, such as identity documents and commercial agreements, need to be copied;
- An increase in the use of telephones, faxes and postage as the paralegals must consult and have meetings with an increased number of other parties involved to resolve the cases / problems of clients; and
- An increase in transport costs, as the paralegals must consult and have meetings with more other parties involved in order to resolve the cases of the additional clients.

Figure 3: Example of the influence of an activity on variable costs

Capital or Once-off Costs: These are costs incurred in purchasing items which only need to be acquired once and usually at the start of the project. They are also referred to as capital items and examples include motor vehicles, buildings, centre furniture, computers, printers and fax machines.

5.2.3 *Budget Line Items*

Line items are types of expenditure that can be indicated as a group or individually, such as salaries listed below. Salaries include the salaries of all the members of staff of the centre, but are reflected as one line item. An example of a single expenditure that is also a single line item is vehicle maintenance where only vehicle maintenance will be included in this description.

Salaries: including expenses incurred in employing volunteers, the employer's contributions to the Unemployment Insurance Fund or pension funds, as well as bonuses.

Capital/once-off costs, such as the purchase of computers, centre furniture and equipment. These need to be specified.

Rent and rent-related expenses, such as maintenance.

Administration: this is a broad category of expenditure that relates to the administration of the organisation and the running of the centre. "Administration" generally, includes telephone, electricity, cleaning and general travelling costs, etc. These expenses need to be detailed and reflected as sub-categories.

Staff Development and Meetings:

Staff Development refers to any activities aimed at improving the skills of the advice centre's staff. Staff development may consist of either:

- (i) in-house workshops (in which case, budgeted expenses may include facilitator fees, venue hire, refreshments, stationery used during workshops (flip chart paper, pens, markers, 'prestik', costs of printing workshop materials etc.); or
- (ii) study fees for staff members towards an appropriate degree, certificate or diploma; or
- (iii) members of staff attending skills workshops offered by other organisations (in which case budgeted line items could include travelling, accommodation, meals and attendance fees).

Meetings relate to expenses incurred by the advice centre's board or management committee when they hold meetings (for instance travelling to such meetings, refreshments and the photocopying of reports and financial statements, at such meetings, etc)

Project Costs: Project costs depend on the nature of the project but may include flip chart paper and pens, printing, or any other cost that the organisation may incur for a particular project. This line item is only included if particular projects are undertaken during the particular year.

Auditing, banking fees and bank charges: banking fees and bank charges are charged throughout the month for banking transactions and must be included to reflect all the expenditure of the organisation even if no direct payment was made, but automatically charged to the bank account of the paralegal advice centre.

Contingency Expenses: this line item provides you with a safety net, should some of your project items cost more than you estimated. This is usually set at a maximum of 10% of your total budget.

Please remember that budgets, while they should be as accurate as possible, need to be flexible, to take into account the unexpected. For example, the cost of petrol or postage may increase during the year. This is why your contingency line item is important.

For the purpose of understanding budget estimates, it is important to show, under each line item, how each estimate is arrived at.

Examples of line items consisting of multiple costs:

(a) Rental: 12 x months rental @ R2000 pm = R24 000

(b) Workshop expenses:

(i) Refreshments: 20 participant x 3 workshops @ R30 per participant = R1 800

(ii) Transport of participants: 3 x workshops @ R1500 per workshop = R4 500

(iii) Workshop stationery: 3 x workshops @ R50 per workshop = R150

(iv) Photocopying and binding of training materials: 20 participants x 3 workshops @ R12,00 per participant = R720

(c) Electricity: 12 months @ R480 pm* = R5 760

* the estimated electricity costs provide for an estimated 15% increase on the current tariffs

Figure 4: Example of line items with multiple costs

6. BUDGET FORMATS

There are various ways of reflecting a budget. For the purpose of this Guide, we shall consider two formats:

- (1) budget summary; and
- (2) budget breakdown

These particular formats are useful for advice centres as they link every activity with the budget. From the example below of a budget breakdown one can see that all expenditure is explained as each item is calculated for the specific period of the budget and then included in the budget summary.

6.1 THE BUDGET SUMMARY

The budget summary, an example of which is given below, provides an overview of the budget and shows how the calculations are arrived at⁵. It also identifies the proposed source of funds. This is normally the type of presentation that funders expect you to include in your funding proposal.

In the example below the financial year of the centre runs from the 1 March to 28 February. In accounting and for the sake of reporting, all organisations and businesses have a financial year. In the example below the Foundation for Human Rights contributes to the cost of this advice centre but does not cover all the costs and the advice centre is also dependent on other donations to cover some of its expenditure.

⁵ Symes C (2002) *volume 4 Managing Money and Fundraising* in *The New Toolbox: A handbook for Community Based Organisations* at 8.

**Sample Budget for a Paralegal Advice Centre
Financial Year 1 March 2012 to 28 February 2013**

Budget line item and method of calculation	Amount - Income		Total Expenses
	Founda- tion for Human Rights	Other :donations	
Expenses			
1. Salaries			
1.1. Coordinator - 12 months @ R5,500 per month plus 13 th cheque	40 000	31, 500	71, 500
1.2. Paralegals – 2 x (12 months @ R3, 500 per month plus 13 th cheque)	45, 500	45, 500	91, 000
1.3. Administrator– 12 months @ R3, 000 per month plus 13 th cheque	30, 000	9, 000	39, 000
Sub total	115, 500	86, 000	201, 500
2. Administration costs			
2.1. Rent – 12 months @ R1, 500 per month	10, 000	8, 000	18, 000
2.2. Telephone & postage – 12 months @ R620 per month	4, 000	3, 440	7, 440
2.3. Stationery – 12 months @ R200 per month	1, 400	1, 000	2, 400
2.4. Audit – Once-off annual fee	2, 500	1, 500	4, 000
2.5. Cleaning Materials – 12 months @ R150 per month	1, 000	800	1, 800
2.6. Equipment Maintenance – 12 months @ R140 per month			
2.7. Travelling Costs – 12 months @ R300 per month	1, 000	680	1, 680
2.8. Sundries – 12 months @ R150 per month	2, 000	1, 600	3, 600
Sub-total	1, 200	600	1, 800
	23, 100	17, 620	40, 720
3. Training Programme costs			
3.1. Trainer's fees – 8 workshops @ R2, 000 per workshop			
3.2. Workshop materials – 20 trainees @ R175 per trainee for 8 workshops	16, 000		16, 000
3.3. Venue hire & food – 20 trainees @ R150 per trainee for 8 workshops	28, 000		28, 000
Sub-total	24, 000		24, 000
	68, 000		68, 000
Total	206, 600	103, 620	310, 220

Figure 5: Sample budget

6.2 THE BUDGET BREAKDOWN

In a "Budget Breakdown"⁶, income and expenditure are broken down into time periods. The example below shows a budget over a 12 month period. Certain line items show monthly expenditure during the entire period, for instance rental and salaries. In the case of other budget line items however, expenditure is scheduled for a few specified months only. The worksheet can be adjusted to cover any period of time and can even be broken down on a weekly basis, depending on the extent of details required. This method

⁶ Symes C (2002) *volume 4 Managing Money and Fundraising in The New Toolbox: A handbook for Community Based Organisations* at 9.

facilitates planning and makes it easier to monitor both implementation of activities and of expenditure.

No.	Budget line item	Expenditure for 12 months												Total
		1	2	3	4	5	6	7	8	9	10	11	12	
1.	Salaries													
1.1	Coordinator	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500	11,000	71,500
1.2	Paralegals	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	14,000	91,000
1.3	Administrator	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	6,000	39,000
	Sub-total	15,500	15,500	15,500	15,500	15,500	15,500	15,500	15,500	15,500	15,500	15,500	31,000	201,500
2.	Admin costs													
2.1	Rent	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	18,000
2.2	Telephone	620	620	620	620	620	620	620	620	620	620	620	620	7,440
2.3	Stationery	200	200	200	200	200	200	200	200	200	200	200	200	2,400
2.4	Audit			4,000										4,000
2.5	Cleaning Materials	150	150	150	150	150	150	150	150	150	150	150	150	1,800
2.6	Equipment Maintenance	140	140	140	140	140	140	140	140	140	140	140	140	1,680
2.7	Travelling Costs	300	300	300	300	300	300	300	300	300	300	300	300	3,600
2.8	Sundries	150	150	150	150	150	150	150	150	150	150	150	150	1,800
	Sub-total	3,060	3,060	7,060	3,060	3,060	3,060	3,060	3,060	3,060	3,060	3,060	3,060	40,720
3.	Programme costs													

3.1	Trainer's fees	0	2,000	0	2,000	2,000	2,000	0	2,000	2,000	2,000	0	2,000	16,000
3.2	Workshop materials	0	3,500	0	3,500	3,500	3,500	0	3,500	3,500	3,500	0	3,500	28,000
3.3	Venue hire & refreshments	0	3,000	0	3,000	3,000	3,000	0	3,000	3,000	3,000	0	3,000	24,000
	Sub-total	0	8,500	0	8,500	8,500	8,500	0	8,500	8,500	8,500	0	8,500	68,000
	Total	18,560	27,060	22,560	27,060	27,060	27,060	18,560	27,060	27,060	27,060	18,560	42,560	310,220

Figure 6: Budget breakdown

Involvement of Management in the Budgeting Process

The management of the paralegal advice centre be it in the form of a board of trustees, management committee or other form of governing board, plays a vital role in fundraising and in approving expenditure. The governing body thus needs to be involved in the budgeting process and needs to approve the budget before it is submitted to funders or before the budget becomes operative.

In considering approval of the budget, the governing body should consider a number of issues:

- Is the budget realistic? – will the advice centre reasonably be in a position to raise the income reflected?
- Is the budget viable? –have the costs been calculated accurately and will the organisation be able to operate within the budget?
- Does the budget provide for an optimisation of the advice centre's available resources? Can the resources be utilised more effectively or more cost productive?
- Will the advice centre's beneficiaries (the community) derive maximum benefit from the planned activities, or can the resources be more effectively utilised?

ACTIVITY 1:

Prepare a project budget for a one day human rights campaign on the rights of women and children:

You are going to use stationery in the form of examination pads and pens, flipchart paper and permanent marker pens for writing on the flipchart. You are going to rent a venue for the workshop as part of the campaign, you want to have posters made to advertise the campaign and you are going to provide transport for the community to attend the workshop as the area is rural and people are spread over a wide geographical area. You expect that 30 people will attend the workshop. Transport in this area costs approximately R600.00 for a 15 (fifteen) seater taxi. Remember to include the different expenditures that you are going to have. Ensure that your budget is realistic and please do it in the budget summary format.

FEEDBACK TO ACTIVITY 1:

A model answer for the above exercise in the budget summary format and which includes the items mentioned above, would be the following:

Human Rights Campaign Budget of Elliotdale Advice Centre	
Stationery (30 x R10 Exam pads) + (30 x R2 Pens)+ (1 x R30 Flipchart paper) (4 x R10 Permanent marker pens)	R430.00
Venue Hire (1 x R300)	R300.00
Printing (5 x R35 Posters)	R175.00
Transport (2 x R600)	R1200.00
Total	R2105.00

7. DOCUMENTS THAT NEED TO ACCOMPANY A BUDGET PREPARED FOR FUNDERS

Before considering funding an advice centre, funders want to have a full picture of the potential beneficiaries. They also want to ensure that the organisation has a proper management structure with oversight and accountability mechanisms and proper financial management. The funders also want to get to know the organisation that they are possibly going to fund. When submitting a funding proposal it is thus advisable (even if the funder does not require you to do so) to attach the following documentation:⁷

- The constitution, if the advice centre is required to have one;
- Documentation indicating the legal status of the organisation, for instance, a trust deed, the NPO registration certificate, the company documents etc.
- The most recent audited financial statements (if the advice centre is a registered NPO or Trust) or management accounts if the financial year end is not complete;
- The strategic plan and plan of action informed by the budget; and
- Any useful publicity received by the advice centre, for instance a newspaper clipping, brochure, newsletter and photographs of its activities.

8. MONITOR AND REVIEW

It is always good to consult your budget before ordering or planning to purchase anything. Your budget will inform you of the funding available for particular line items. Always check the levels of your budget and make any necessary adjustments.

Monitoring the budget entails updating the expenditure regularly preferably, monthly and comparing it with the budget. There should not be a major difference between the budgeted expenditure and the actual expenditure. The reasons for these differences, if there are any, must be investigated and explained and if there is always going to be a difference because a particular expenditure has increased due to sudden unexpected price increases then one must review the budget and make the necessary changes to accommodate the increases in expenditure. However, if the increase in expenditure is due to people not using the funds properly then the necessary action must be taken to get the staff to spend the money towards the activities budgeted for.

⁷Beatie Hofmeyr(2005) *Paralegal Manual* at 524.

A review is a more formal way of monitoring as it also includes making changes and adjustments to the budget as well as ensuring that members of staff spend the money properly.

9. FUNDRAISING

9.1 INTRODUCTION

There is a saying that “money makes the world go round”. This holds equally true for running an advice centre. Fundraising is possibly the most difficult but also most crucial part of setting up an organisation and keeping it running on a long term basis. An advice centre has to compete against numerous other organisations for limited funding. However, whilst funding is essential for your advice centre to achieve its objectives, service to the community rather than funding should be the main focus.

This topic deals with some of the more important factors regarding fundraising, including dealing with potential funders, i.e. how to identify and approach them, and potential fundraising activities. Let us begin by considering a few basic issues.

9.2 SOME BASIC QUESTIONS ON FUNDRAISING

(a) Why fundraise?

The main reasons for fundraising include:

- Firstly, to have the necessary resources for the advice centre to meet its objectives;
- Secondly, to ensure the sustainability of the organisation. Funding is not only needed for current projects, but also to ensure the long term survival of the organisation and especially its most treasured resource, namely its employees; and
- Thirdly, to diversify funding, meaning not to become too dependent on a single funder.

(b) Understanding “fundraising”

Donors don't give to institutions. They invest in ideas and people in whom they believe. - **G.T. Smith**

There is a misconception that fundraising implies begging funders for money. If the activity of fundraising is indeed thought of as begging, then it becomes an undignified and often painful experience.

Fundraising should rather be seen as a way of matching up a non-profit organisation with a funder, both of whom share similar values, objectives and both equally passionate about making a difference to society. Your organisation should thus see itself as a vehicle or agent of the funder. It offers the funder an opportunity, through your organisation's activities, to become actively involved in a worthwhile cause of building and transforming society.

(c) What is the key to successful fundraising?

A funder will not fund an organisation or a project merely based on its just or worthwhile cause. There is far more involved in fundraising than just making out a case for funding. An effective fundraising strategy is also best achieved by a team brain-storming and formulating a joint action plan. The main focus in attracting funding should be on the following:

➤ Identify potential funders:

There are literally thousands of funders out there, but not all match the values and objectives that your organisation is striving for. Your investigation should cover local, regional, national and international opportunities:

- (i) Local: for example rich and generous individuals in your community, businesses and the local municipality;
- (ii) Regional/provincial: regional and provincial government and especially those departments that may be able to use paralegals, for instance the Departments of Social Development, Trade and Industries;
- (iii) National: religious organisations, trade unions, national NGO's, national government departments, like the Department of Justice, the social responsibility sections of national banks, mining houses and big companies;
- (iv) International: governments of other countries and international NGO's, multinational organisations like the United Nations and World Bank, private family foundations like the Bill gates Foundation, the Aga Khan Foundation, Kaiser Family Foundation and Ford Foundation.

A considerable number of international funders have, and are busy leaving South Africa.

Many of these funders had invested in South Africa in order to help the country and its people in making its first few steps as a young democracy. Having seen their aims at least partially fulfilled, these funders are now committing themselves to other countries in the world that have only recently become democratised.

On the other hand, the government has often been slow and erratic in releasing funding to organisations it had promised funding.

Most large companies in South Africa are keen to invest in social issues as their contribution towards building a better country. They normally have "Corporate

Social Responsibility" divisions which are constantly on the lookout to partner with NGO's.

To identify potential funders you can in addition use a variety of methods, for instance:

- (i) Peruse the business section of national weekly newspapers;
 - (ii) Obtain a database from one of the database service agencies. You can try "Prodder" available at www.papilionpress.co.za.
 - (iii) Subscribe to electronic newsletters of organisations like SANGOCO;
 - (iv) Do Google searches using your main objectives as key words
- Building a good relationship with funders: Fundraising is largely a relationship-building exercise. As is the case of relationships between individuals, this involves having knowledge of what the funder stands for and what its values and preferences are. To achieve this takes time and does not happen overnight. The foundations of any sound relationship are respect and mutual trust. The best way for an organisation to gain the trust and respect of its funders is by acting honestly and professionally at all times.
 - Instilling confidence: a funder needs to be assured that the organisation seeking funding is properly constituted, that it has strong leadership, sound management structures and financial systems, high moral and ethical values and that it has a good track record in delivering its promises;
 - A good proposal :(see a suggested format for a proposal below).

Self-assessment 1:

Compile a list of possible funders, in your area for your Paralegal Advice Centre using the categories listed above.

9.3 THE BASICS THAT SHOULD BE IN PLACE IN ORDER TO ATTRACT FUNDERS

- (a) Legally established: Your advice office must have been legally established (see the discussion on legal structures and registration as a NPO in Study Unit 3);
- (b) Active management committee: there should be a governing structure in place that monitors the activities and expenses of the organisation;
- (c) Tax exemption: Section 18A of *The Income Tax Act 58 of 1962* provides for limited tax deduction to the funder of amounts donated to a NPO registered as a Public Benefit Organisation (PBO), provided the organisation's activities fall under those listed under Part II of the Ninth Schedule of the Act. This is clearly advantageous to funders who are liable for tax in South Africa. A PBO is registered with the South African Revenue Services. Please note that if an NPO does not register as a PBO, it will be liable for income and other taxes;
- (d) That the objectives and needs are being addressed: The objectives should be spelt out clearly in the founding document. The needs being addressed should be both real and prevalent;

- (e) Shared vision and common values: this entails identifying funders with similar objectives as your own. If the objectives of your organisation are for example, "to facilitate access to justice for rural communities", then your underlying values would differ vastly from those of a funder striving for "biodiversity and greening";
- (f) Reputation: funders look for organisations and people who have a good reputation and whom they can trust. However, it may take time to build up a good reputation and due to this it might be a struggle.

9.4 THE BASIC STAGES FOR FUNDRAISING

1. *Project Planning*

Funders will only consider funding your organisation if you have a clear plan on what and how their money will be used.

2. *Costing and drawing up a Budget*

Funders want precise details on what aspects will be funded and how each of them is to be funded, as well as reasonable estimates of costs.

Suggested Budgeting Checklist:

Step 1: Identify and plan all activities for the period of the project

Step 2: Determine the different expenditure items (see the discussion on budgets)

Step 3: Indicate from where you expect the income to come

Step 4: Determine/estimate the costs of each expenditure item

Step 5: Work out if there is any shortfall between income and expenditure

Step 6: From your income and expenditure budget work out a cash flow budget

3. Putting a Funding Proposal in writing

Most larger funders have strict requirements as to the format and contents of proposals for funding. The following is a simple example of a proposal where no format has been prescribed:

Contents of a Funding Proposal:

1. The Executive Summary:

This is a summary of the title; nature of the project (what- how- by whom and where the project will operate); the name and contact details of the person in charge of the advice centre

2. Introduction:

- This serves to convince the funder that your advice centre is reputable and dependable
- Include the main issues to be addressed

3. The Problem Statement:

- Mention the issues or problem(s) which you wish to solve through the project. It should be clear that there is in fact a real problem deserving funds from the funder
- How was the need identified
- Who will the project's beneficiaries be (if possible, state approximate numbers of beneficiaries and provide pictures to add a human element)

4. Project details/ Action Plan:

- Details of how the project will go about solving the problems in order to find a solution. Adopt a step-by step approach listing the planned action with regard to each problem
- Include an action plan(maybe in the form of a schedule) indicating in a logical way (i) the action to be taken (ii) estimated period when each activity will take place
- The secret to proposal writing is in ensuring that the project plan follows the budget in a way that makes sense to someone reading it
-

5. Sustainability:

Funders want to be assured that the project will have a lasting impact on the beneficiaries. It is thus important to state how the project will benefit the beneficiaries and what such benefits will be

6. Monitoring and Evaluation:

There is no point in setting out goals and an action plan if there are no mechanisms in place to make sure that these are achieved.

Monitoring entails asking certain questions:

- What has been done?
- What has not been done and why?
- What still needs to be done?
- Who will do what and why?

7. Budget:

The budget forms the “heart” of a proposal and great care should be taken to ensure that every activity outlined in your Project Details/ Plan of Action is covered.

Items to be considered include the following:

- Rentals for office space
- Water and lights
- Salaries or stipends (remember that management committee members are volunteers and should not be paid)
- Consumables (for instance cleaning materials, toilet paper)
- Stationery
- Telephone and fax costs
- Photocopying
- Marketing materials like posters
- Transport costs
- Workshop expenses: transport, accommodation and meals/refreshments for participants
- Office furniture
- Bank charges and audit fees

A funder will be impressed with accurate, detailed, relevant and realistic costs. Take care that salaries do not take up too much in relation to the total project costs.

ACTIVITY 2: PROPOSAL

The Facts:

The community of Hlalapansi has appointed you, as the head of a small group of community leaders to start the Hlalapansi paralegal advice centre. The community is poor and you do not have many resources to start off with. The main problems in the community are on unemployment, a high death rate due to the incidence of TB and HIV/Aids and poor service delivery.

Having heard over the radio of the corporate responsibility initiative of TrustMe bank, you met with the manager of this bank in your village. He told you that the Corporate Responsibility Division of TrustMe Bank is interested in funding projects aimed at addressing the plight of people with HIV. They give a maximum of R250 000 per project.

Task:

Using the steps you have learnt above on how to write a proposal, prepare a proposal to Corporate Responsibility Division of TrustMe Bank. Keep in mind that you should restrict the proposal to the type of activities which a paralegal advice centre is involved.

FEEDBACK ON ACTIVITY 2:

See par 9.3 above

4. *Developing a Fundraising Strategy*

Once you have completed the funding proposal, you should consider how to raise the funds. This entails identifying funders who have the same values as you have and who may be interested in funding the entire project or only some of the activities.

5. Discussions with potential Funders

Having identified potential funders, you need to research the following

- their background
- their objectives
- issues in which they are interested
- how much funding they provide
- whether they publish invitations to tender or whether one has to approach them

6. *Securing Funding*

This stage may involve the difficult part of having to approach funders either by meeting them or by sending letters requesting assistance.

A few things to consider before meeting with funders:

- Arrange the meeting well in advance and send the funder brief but relevant information about your organisation and the project you want them to fund
- Make up a folder for the meeting which can include a brochure of your advice centre, a copy of the founding document and previous reports;
- Go well prepared for the meeting. If you are a delegation, then speak "in one voice" and decide beforehand who will say what;
- Explain the philosophy of your organisation. It is, however, more professional to listen carefully and to ask thoughtful and relevant questions, rather than talking too much yourself;
- Remember that building a relationship is far more than merely asking for money.

9.5 COMMUNICATING WITH AND REPORTING TO FUNDERS

If funding is granted remember to send a thank you letter to the funders. Fundraising process does not end with receiving the money. Funders expect to be kept informed of progress, both with a specific project and with your organisation. Bigger funders have strict reporting requirements, normally consisting of narrative and financial reports.

As stated above, a funder sees your organisation as carrying out the funder's own objectives. Funders appreciate being kept in the picture of what is happening, over and above receiving the required reports. Some ideas on keeping funders involved:

- regular newsletters;
- inviting them to officiate or even to merely attend functions organised by your organisation; or
- ensuring that your organisation has press coverage and sending newspaper clipping to funders

9.6 OTHER FUNDRAISING ACTIVITIES

Consider combining events that take place in your community with creating an awareness of your organisation which can also serve as a public relations exercise.

There are many ways in which organisations can generate funds:

- they can organise talks on topical issues in the community and get people to join and pay a membership fee;
- they can contact an influential person, for example an athlete or soccer player, and ask them to get their sports club to host a charity match or sporting event in favour of the centre;

Self-Assessment 2:

- a) Why is it important to fundraise?
- b) Name three key factors to successful fundraising
- c) Why is it wrong to say that to fundraise is "to beg"? What is the better way of describing fundraising?
- d) Name the five basic conditions that should be in place in order to attract funders
- e) Name the various steps (in the correct order) to prepare a budget for a funding proposal

10. AUDITS

At the end of each financial year you must have your financial records audited as it is a requirement that all NPO's must be audited. An audit is done by a qualified auditor, who is not an employee of your organisation, nor a member of the governing body or management committee. The audit should be done as soon as possible after the end of the financial year so that the audited statements can form part of the annual report which reports on all your activities for the year including your successes and highlights as a centre.

An audit certifies that your organisation's financial accounts are a true reflection or record of your financial activities. An audit will:

- review what money was received and how it was spent;
- provide the final figures of income and expenditure for the financial year;
- indicate whether the money was spent in accordance with your constitution and based on the conditions under which the grant was given;
- indicate to you whether your financial management systems and account-keeping systems are appropriate;
- review the value of your organisation's assets; and
- provide advice about improving your financial systems.

Everyone in the organisation should see the process of the audit as a helpful exercise because the audit will help your organisation to learn how to manage its financial systems better. Apart from auditing your annual income and expenditure, individual project grants can also be audited. Often, funders will request that individual project grants be audited when the project has been completed.

10.1 PREPARING FOR AN AUDIT

Many organisations only begin preparing for an audit at the end of the financial year, rather than at the beginning of the year. It is much easier and better practice to build financial management systems that prepare for your audit throughout the financial year. The plastic bag approach of some organisations, where all the receipts, payment slips and vouchers are put in a bag or box, is not recommended!

10.2 THE THREE PARTS OF EVERY AUDIT REPORT

10.2.1 *The statement of income and expenditure*

This will cover the income and expenditure from all of your bank accounts. The purpose of this statement or bottom line of the income and expenditure statement is to tell you if your organisation still has money (a surplus) or owes money (has a deficit).

10.2.2 *The Balance Sheet*

The balance sheet will tell you the total worth of your advice centre. It will include your cash assets (money in the bank) and your capital assets (equipment, land and buildings).

10.2.3 *The auditor's declaration that everything is in order*

The auditor's declaration is normally in the form of a report that states that, 'after having reviewed your statement of income and expenditure and balance sheet, the auditor declares that the financial affairs of your organisation are in order'.

However, the auditor will not issue this declaration unless he thinks that your financial affairs are in order. He may alternatively issue a qualified report. If he does not declare that your affairs are in order, you need to discuss the situation with your governing board and the auditor. This is a serious situation and it needs to be sorted out immediately. Your auditor will be able to advise you on what you need to do to correct the situation. It is important that your organisation understands the auditor's report. If you do not understand it, get the auditor to explain it to you, as this is part of the service for which you are paying him.

10.3 **AUDIT PREPARATION AND CHECKLIST**

The auditor needs information to do the audit and it is always useful to make a list of the things that he or she needs. All the information and decisions that affect the money of the organisation, including the names of the persons who are authorised to take and execute financial decisions must be provided to him. All the documents and registers must also be checked by the auditor. The list below is an example of such a list but you can add items that you need or remove items that you do not use in your organisation.

Auditors would like to see the following:

- ✓ a copy of the latest constitution including any amendments to it
- ✓ copies of minutes of management committee or board meetings where financial decisions were taken
- ✓ a record of cash payments and receipts books including your petty cashbook
- ✓ your invoice books
- ✓ copies of your bank reconciliations
- ✓ bank statements of the entire year and possibly for the first month or two after the year end
- ✓ bank books such as saving account books, etc
- ✓ a record of deposits and withdrawals for each of your bank accounts. This may be recorded in your bank books or in the information that you prepare for the auditor
- ✓ copies of your funding contracts and / or agreements
- ✓ a list of any accruals / debtors. These are amounts of money that you still owe, for goods or services already received but not yet paid
- ✓ a list of any pre-payments. This means expenditure that your organisation has paid for goods or services but which you have not yet received
- ✓ a list of creditors to whom the organisation owes money at the end of the financial year
- ✓ personnel files or a list of everyone who has worked for your organisation for the past financial year and details of their salaries and any changes, such as increases / adjustments that may have occurred during the year
- ✓ salary registers, copies of pay slips and any other salary record

- ✓ asset register
- ✓ copies of vehicle log books
- ✓ copies of any payment of membership subscription fees
- ✓ donation registers
- ✓ records/statements of any other investments or saving accounts the organisation has
- ✓ any other documentation that explains any financial transaction or decision taken during the financial year

Your organisation should also ensure that someone is appointed as the liaison person with the auditor. This may be the treasurer or the most senior of the paid staff members.

11. CONCLUSION

Budgets are important for the advice centre as it provides a guide to see what money is needed and how this money is spent. The budget is only effective if it is used to compare the actual income and expenditure of the advice centre with what was budgeted and planned. The activities of the advice centre are shown in the budget and if the money was not used in the way indicated in the budget, it might mean that you are not doing the work that you planned to do and that the advice centre is not being run properly.

Funders and management need to see whether expenditure is in line with the budget and unexplained deviations imply that the advice centre cannot manage its money properly. It could also be seen as mismanagement and maladministration of funds.

The auditor also looks at the budget as part of the income statement and will report on any differences or variances between them, especially those that are unexplained.

To reduce the cost of auditors and to maintain the trust of funders and the community it is important that the advice centre always gets a good report from the auditor. The checklist helps to prevent the auditors from wasting time on unnecessary questions as all the documents are presented to them at the beginning of the audit.

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STUDY UNIT 3

REGISTERING A PARALEGAL ADVICE CENTRE AS AN NPO

1. LEARNING OUTCOMES

At the end of this study unit you should:

- **Understand the purpose of the Non-profit Organisations Act 71 of 1997 (hereafter referred to as the 'NPO Act') and the benefits of registering a Paralegal Advice Centre in terms of this Act and the duties of an organisation registered under the Act.**
- **Understand the differences between the different types of legal structures, namely, a Trust, a Voluntary Association and an NPO.**
- **Understand the criteria for choosing a legal entity/structure for an NPO.**

2. INTRODUCTION

In the previous study units we discussed paralegals and Paralegal Advice Centres in general, how to establish a Paralegal Advice Centre and how to do a budget for the centre. In this study unit the discussion will cover the importance of registering a Paralegal Advice Centre as a Non-Profit Organisation (hereafter referred to as the 'NPO'), the different legal entities/structures by which a Paralegal Advice Centre can operate, as well as the registration requirements for such legal entities/structures. As will be seen from the discussion, registration has a number of advantages for Paralegal Advice Centres.

3. THE NON-PROFIT ORGANISATIONS ACT

3.1 GENERAL OVERVIEW

During apartheid the government on purpose put obstacles in the way of NPO's whose explicit aims were to oppose the unjust regime and to give assistance to those not opposed to it.

One of the measures used by the government to manipulate and control financial support to non-governmental organisations (hereafter referred to as 'NGO's') was the Fundraising Act 107 of 1978. The post democratic government identified NPO's as an important factor in achieving the transformation of the South African society and in realising civil and socio-economic rights, especially for the poor and marginalised groups. NPO's are established with the purpose that any profit made will go back into the organisation to be used for its administration or for projects which contribute to the non-profit objective of the organisation. Unlike a company, no dividends may thus be paid to individuals.

There is however also a realisation that funding alone does not guarantee the success of the role of NGO's and unfortunately, maladministration and even theft by officials of a few NPO's tarnished the reputation of this sector, compromising the entire sector's

credibility amongst their beneficiaries (their communities, and funders). The NPO Act was introduced to regulate NGO's and put measures in place to promote accountability, good governance and transparency.

3.1.1 Objectives of the NPO Act

The aim of the Non-profit Organisations Act is "...to encourage and support non-profit organisations in their contribution to meeting the diverse needs of the population...."

The NPO Act became law in December 1997. It largely replaced the discredited Fundraising Act.

(See URL <http://www.info.gov.za/view/DownloadFileAction?id=70816>).

The NPO Act aims to support NPO's by:

- (a) Creating an environment in which NPO's can grow and develop;
- (b) Establishing an administrative and regulatory framework within which NPO's can conduct their affairs;
- (c) Encouraging NPO's to run efficiently and to maintain adequate standards of governance, transparency and accountability;
- (d) Providing the public with access to information on registered NPO's;
- (e) Promoting a spirit of co-operation and shared responsibility between governments, donors and other institutions or people who are interested in the non-profit sector.

The NPO Act thus supports accountability by encouraging organisations to operate within a regulated framework, rather than by penalising those organisations which are not.

3.1.2 *Overseeing and administering body*

The Department of Social Development is responsible under the NPO Act to administer the affairs of NPO's through the Directorate of NPO's (see URL <http://www.dsd.gov.za/npo/>). The Directorate has to ensure that all registered NPO's comply with the requirements of the NPO Act (see the discussion on the duties of NPO's in paragraph 3.3.5 below)The NPO Act has created a voluntary registration process for NPOs which are:

- (a) established for a public purpose; and
- (b) the income and property of which are not distributable to its members or office bearers except for reasonable compensation for services rendered (section 1(x) of the NPO Act).

3.1.3 *Conditions for registration as an NPO*

An NPO may apply for registration to the Directorate of NPO's provided it has the following characteristics:

- (a) it must operate in the form of a trust, a non-profit company or a voluntary association. This means that profit companies, cooperatives and close corporations (CC's) are excluded;
- (b) the founding document must meet the requirements of section 12 (2) of the NPO Act;
- (c) the organisation must have been established for a purpose accessible to the general public;
- (d) the organisation is not an organ of state; and
- (e) on dissolution, the income and property of the organisation may not be distributed to its members or office bearers. The latter may however be reasonably compensated for services rendered.

Take note that the Directorate of NPO's has a very useful checklist for the section 12(2) requirements mentioned above (see URL http://www.dsd.gov.za/npo/index.php?option=com_content&task=view&id=74&itemid=149).

Self-Assessment 1:

- (1) Mention three objectives or aims that the NPO Act is trying to achieve.
- (2) Which body makes sure that those organisations which register under the NPO Act comply with its provisions?
- (3) What are the five conditions with which an organisation has to comply in order to register as an NPO?

3.2 FORMS OF LEGAL ENTITIES/STRUCTURES RECOGNISED FOR REGISTRATION IN TERMS OF THE NPO ACT

There are three different forms of legal entities/structures which can be registered in terms of the NPO Act, namely a voluntary association, a trust and a non-profit company. This means that other legal entities, for instance, cooperatives, close corporations and companies cannot register as NPO's. An NPO is defined as 'a trust, a company or other association of people' in section 1(x) of the NPO Act. The governance structure, characteristics, formation process and founding documents of each of these entities/structures will be discussed below. For a discussion on which entity/structure is the most appropriate with regard to aspects such as the size of the organisation and tax implication, see URL <http://www.etu.org.za/toolbox/docs/building/lrc.html>.

3.2.1 *Voluntary Association*

A voluntary association is created by three or more people entering into an agreement to form an association for the purpose of meeting a common non-profit objective. In terms of the common law the agreement may be concluded orally. In order to avoid future disputes it is however advisable for the agreement to be put in writing. Also note that only for a voluntary association, and not for any of the other forms of entity, it is required that the constitution be registered.

(a) Governance structure

The constitution of a voluntary association should provide for the establishment of a management committee with executive powers to manage the affairs of the voluntary association.

(b) Characteristics of a Voluntary Association

(i) Independent legal personality:

This means that a voluntary association exists separately from its members. In order to create an incorporated association, both the common law and the NPO Act require that the following be included in the association's constitution:

- ❖ It will continue to exist independently from and despite changes in its membership;
- ❖ The assets and liabilities are owned and owed by the association and not by its members;
- ❖
- (ii) It may own property in its own name; and
- (iii) Changes in the membership do not affect the association.

(c) How to form a Voluntary Association

There has to be either a written or verbal agreement. Since a voluntary association is governed by the common law, there is no government registry where the voluntary association has to be registered. For reasons outlined in paragraph 3.2 above, it is however advisable for a voluntary association to be registered as a NPO with the NPO Directorate, thereby ensuring compliance with the regulatory requirements of the NPO Act.

(d) Founding Document

The founding document of a voluntary association is the constitution specifying the objectives, governance structures, membership, powers, rights and obligations of the members and the management committee and the management of its property and financial affairs (See study unit 1 where the important elements of a constitution were discussed).

3.2.2 *The Trust*

In the case of an NPO, a trust is created by an agreement in writing in a document (the trust document), in terms of which an owner of property (the "founder") hands over the property to a group of people (the "trustees") to administer on behalf of others ("the beneficiaries") in the achievement of certain stated public objectives. Trusts are regulated by the Trust Property Control Act 57 of 1988.

(a) Characteristics of a Trust

Unlike voluntary associations trusts do not enjoy independent legal personality, except for purposes of insolvency and tax. A trust has a quasi-judicial personality; consequently the trustees get sued in their capacity as trustees, and not in their personal capacity.

The Trust Property Control Act requires that the property of the trust must remain separate from the personal property of the trustees.

Trustees act in a fiduciary capacity on behalf of the beneficiaries. Unless exempted in the trust deed, the trustees may be required by the Master of the High Court to furnish security to ensure that they exercise their fiduciary duties adequately.

(b) Governance structure

A trust is governed by trustees. The extent of the powers of the trustees is set out in the trust deed. It is common practice to set such powers sufficiently wide to ensure that the trustees are able to achieve the purposes of the trust.

(c) The Founding Document

The trust deed is the founding document of a trust. A trust deed should set out the main purposes and objectives, governance structures, the appointment and the removal of trustees, the powers and duties of trustees, dissolution of the trust and financial guidelines. The trust deed has to be attested before registration with the Master of the High Court

The trust deed will require additional clauses if registered in terms of the NPO Act.

(d) Government Registry

The trust deed has to be registered with the Master of the High Court in the province where the trust operates or where the property of the trust is situated (see URL <http://www.justice.gov.za/master/trust.html>). The Trust Property Control Act requires the Master to control the appointment of trustees. The Master may request financial statements from the trustees and has the power to remove a trustee.

3.2.3 *The Non-Profit Company*

(a) Background

Section 21 of the Companies Act 61 of 1973 provided for a type of company which was not aimed specifically at NPO's but in terms of which many NPO's were registered, the so-called s 21 companies. The latter structure was treated as a public company by the 1973 Companies Act and subjected to a complicated and bureaucratic registration process with onerous regulatory measures. It was more suitable for larger organisations and less appropriate for organisations in the non-profit sector.

Following a lengthy process of review, the 1973 Companies Act was almost entirely replaced with the Companies Act 71 of 2008 (hereafter referred to as the 'new Companies Act'), which became effective on 3 May 2011. The new Companies Act has added a new type of company structure to the other forms of companies, namely the "Non-Profit Company". The Non-Profit Company is no longer treated as a "public company".

The new Companies Act applies to both NPO's registered since its promulgation as well as to the former "section 21 companies".

(b) Characteristics of a Non-Profit Company (NPC)

Non-Profit Companies (hereafter referred to as 'NPC') are treated differently from both public and private companies under the new Companies Act.

The NPC has the choice between having membership and a board of directors or merely a board of directors. The choice between the two options must be clearly stated in the Memorandum of Incorporation.

(c) Governance structure

The NPC must have a board of directors consisting of at least three directors. NPC's can have shareholders (members), but, unlike the former section 21 companies, it is not compulsory.

If the company wishes to have more than the stipulated minimum number of directors, this must also be clearly stated in the Memorandum of Incorporation. The new Companies Act stipulates that if a NPC fails to have the minimum number of directors, this would not affect or cancel the board's authority or accountability.

The new Companies Act specifically deals with the fiduciary duties of directors, stipulating that they should exercise their powers and functions as follows:

- ❖ in good faith;
- ❖ for a proper purpose;

- ❖ in the company's best interest;
- ❖ with the reasonable degree of care, skill and diligence expected of a person in the position of the director.

Section 77(3) of the new Companies Act sets out the circumstances under which a director may be held personally liable for any loss, damage or costs incurred as the result of a breach of a fiduciary duty.

The new Companies Act also stipulates when directors will be disqualified or ineligible. This is an important factor to ensure that an NPC is managed by suitable persons.

(d) Founding Document

An NPC is founded on a Memorandum of Incorporation (MOI) which must set out the company's objectives, which should include the "public benefit" intention of the NPC, as well as the social activities which it intends to advance. The MOI has to be signed by a minimum of three persons (incorporators).

The contents of the MOI must comply with the following:

- ❖ All the property and income, whether obtained by donations or profits from income generating activities, must be used to further the objectives of the NPC;
- ❖ Apart from a few exceptions, no part of the NPC's income may be paid to an incorporator, member or director.

(e) Government Registry

NPC's are registered with the Companies and Intellectual Properties Commission (CIPC). Registration can either be done by an attorney, accountant, or statutory service or by any individual following the steps outlined on CIPC's website (see URL <http://www.cipc.co.za/CompaniesReg.aspx>).

There is a two-step registration process:

- ✓ Firstly, the proposed or existing name of the NPC must be submitted for approval to the CIPC by completing a CoR9 form where the approval of the name takes 5 to 10 working days and;
- ✓ Secondly, after approval and after such name has been reserved, a Notice of Incorporation (CoR14) and the MOI (CoR15.1C) should be filed with the CIPC.

ACTIVITY 1:

After you have studied the three different forms of legal entities through which non-profit organisations may be registered, complete the table below:

	THREE DIFFERENT LEGAL ENTITIES/STRUCTURES		
	Voluntary Association	Trust	Non-Profit Company:
Background:	Created by three or more people entering into an agreement to form an association for the purpose of meeting a common non-profit objective		
Characteristics of a Non-Profit Company (NPC)			It is treated uniquely by the Act and distinct from both public and private companies.
Governance structure		Board of trustees	
Regulating Law/s			Companies Act 71 of 2008
Founding Document	Constitution		
Government Registry			Registered with the Companies and Intellectual Properties Commission (CIPC)

FEEDBACK TO ACTIVITY 1:

See para 3.2 above.

3.3 REGISTRATION IN TERMS OF THE NPO ACT**3.3.1** *Requirements for applying to be registered as an NPO*

In paragraph 3.2 above it was discussed which organisations were entitled to apply for NPO status. Before it can apply, the organisation must already have been formally constituted in terms of the requirements of one of the three legal entities/structures recognised by the NPO Act, namely a voluntary association, a trust or a non-profit company.

3.3.2 *Documents required for registration⁸***(a)** The founding document

In the discussion on the various legal entities/structures (see paragraph 3.2 above), we learnt that the three entities/structures have different founding documents:

- Voluntary association: a constitution
- Trust: a trust deed; and
- Non-profit company: a MOI

The founding document must comply with the criteria set out in section 12 of the NPO Act.⁹ For the purpose of registration in terms of the NPO Act, section 12(2) specifies the mandatory clauses that must be contained in a founding document.¹⁰

Two certified copies of the founding document need to accompany the application. The NPO Act does not require the original.

(b) Application form

The form that is available on the the Department of Social Development's website (see URL <http://www.dsd.gov.za/npo/index.php?option=com>) must be accurately completed.

3.3.3 *The Process for applying for registration as a NPO¹¹*

⁸Section 12 of the NPO Act.

⁹For examples of constitutions for voluntary associations and of trust deeds, see www.tshikululu.org.za (NPO registration) and "Mastering good governance: a Guide for the development sector: NPO and PBO registration", Tshikululu Social Investments.

³See "Guide to Nonprofit Organisations (NPO) Act" Legal Resource Centre <http://www.etu.org.za/toolbox/docs/building/guide.html>

¹¹Section 13 of the NPO Act.

The application for registration as a NPO is free. The application should be sent to the Directorate of NPO¹². It must include a covering letter, explaining the documents attached which are required for registration. It is advised that the application be sent by registered mail and that copies are kept of the application and covering letter, as well as proof that they were sent by registered post or by hand, to the HSRC Building, 143 Pretorius Street, Pretoria, 0001.

The Director of NPO's has two months to consider the application. The applicant has one month to appeal against the directorate's refusal to register the organisation as an NPO.¹³ The appeal must be heard by the Arbitration Tribunal within three months of their receipt of the appeal documentation.

3.3.4 *Registration Certificate for an NPO*

Once an organisation is registered as an NPO, a certificate of registration is issued. This certificate is sufficient proof that the NPO has been registered. An NPO remains registered until officially deregistered.

3.3.5 *Duties of an NPO registered under the NPO Act*

(a) General Duties

- To ensure that the founding document remain compliant with the requirements of the NPO Act;
- To ensure that the registered status and registration number appears on all official documentation (section 16(3)).

(b) Duties with regard to Accounting and Financial Records¹⁴

- Maintaining accounting records according to the standards of Generally Accepted Accounting Practices (section 17 (1) (a));
- Drawing up financial statements within six months after the end of its financial year, consisting of an income and expenditure statement and a balance sheet;
- Appointing an accounting officer within two months of drawing up its financial statements, who has to compile a written report and submit it to the organisation; and
- Retaining originals or copies of all books of account and supporting documents of the organisation.

(c) The Duty to provide Reports and Information¹⁵

¹²The Directorate of NPO's, Department of Social Development, Private Bag X901, Pretoria 0001.

¹³Section 14 (1) of the NPO Act sets out the requirements for the appeal.

¹⁴Section 17 of the NPO Act.

¹⁵Section 18 of the NPO Act.

- Within nine months of its financial year end the organisation must submit a narrative report to the Directorate (available on its website);
- To inform the Directorate of any change of names of office bearers or change of address of the organisation;
- At the request of the Directorate, to provide any required information or documentation to enable it to determine whether the organisation is complying with the provisions of the founding documentation, a condition or benefit received from the Minister or any other provision of the Act;
- When amending its constitution, the organisation must furnish the Directorate with (i) a copy of the resolution amending the constitution, (ii) a certificate by an authorised office bearer confirming that the resolution complies with all laws and the organisation's constitution and (iii) the NPO certificate originally issued, if the amendment involves a change in the organisation's name.

3.3.6 *Consequences of Non-Compliance with the NPO Act*¹⁶

Non-compliance by a registered NPO with its constitution and its obligations in terms of the NPO Act may result in deregistration. It is a criminal offence to make a material misrepresentation in any document, narrative, financial or other report submitted to the director,¹⁷ who may refer such matter to the South African Police for criminal investigation.

Self-Assessment 2:

- 1) What are the three main duties of a registered NPO?
- 2) Of what must the financial statements that have to be drawn up consist?
- 3) Which document has to be submitted to the Directorate of Non-Profit Organisations each year?
- 4) What are the requirements if a NPO wants to change its constitution?

3.4 ADVANTAGES FOR A PARALEGAL ADVICE CENTRE TO REGISTER AS A NPO UNDER THE NPO ACT

Registration in terms of the NPO Act provides a Paralegal Advice Centre with a number of benefits. Registration is, however, not a prerequisite for a new NPO to start operating. An organisation may start operating provided it is legally formed and its founding document (for instance its constitution) meets the requirements of the NPO Act. Registration is thus voluntary and application may be made at a later stage after the NPO has started operating.

¹⁶Section 20 of the NPO Act.

¹⁷Section 29 (2) of the NPO Act.

Advantages include:

- (a) Registration as a NPO compels a Paralegal Advice Centre to adopt binding rules governing the management and running of the organisation. This, in turn, provides greater clarity to the staff and management of the Paralegal Advice Centre, the community it serves, its funders and the businesses from which it purchases goods and services;
- (b) Registration results in greater accountability to the advice centre's stakeholders, including the community it serves, funders and the government. Accountability necessarily instils greater trust in the competence and the willingness to run the organisation according to recognised management principles;
- (c) Some structures, like voluntary associations, provide for the legal status of the organisation to be a 'separate legal person'. This means that the organisation's legal identity is separate from that of its members and that:
 - the assets belong to the organisation and not to its members;
 - the organisation as a legal person is responsible for the debts incurred. Members or office bearers are thus not liable for debts unless they committed fraud or were grossly negligent;
 - the organisation has perpetual succession, meaning that it continues even if members or office bearers leave.
- (d) The Financial Intelligence Centre Act 38 of 2001 (FICA) has made NPO registrations a prerequisite for voluntary associations to open a banking account;
- (e) The Lotteries Act 57 of 1997 requires that NPO's wishing to apply for Lottery funding must be registered in terms of the NPO Act;
- (f) In terms of certain statutes, for instance the Public Finance Management Act 1 of 1999 and the Public Finance Management Amendment Act 29 of 1999, only those organisations that are registered as NPO's, can apply for government funding.

3.5 FACTORS TO CONSIDER IN DECIDING ON A LEGAL ENTITY/STRUCTURE FOR A PARALEGAL ADVICE CENTRE

3.5.1 Whether For-Profit or Not for Profit

The first consideration in choosing a legal entity/structure for a NPO is whether it should generate a profit or not.

- (a) Similarities between NPO's and For-profit organisations (FPO's)

NPO's and FPO's are similar in a number of respects, including the following:

- both have governing boards that are accountable to either the owners or members;

- both must be operated for a lawful purpose; and
- both need to be efficient and effective in order to survive.

(b) Differences between NPO's and FPO's

- NPO's serve a public purpose, such as social welfare, basic legal assistance, economic development or education, whilst FPO's operate to make a profit for the benefit of its members;
- Whilst NPO's may make a profit, they may not distribute it to its members, but have to use it to further its objective in serving the community. FPO's may distribute profits to members;
- NPO's often do not generate sufficient income to meet expenses and thus have to fundraise from the public. FPO's may not fundraise from the public but may have to finance shortfalls in operating costs through bank loans. In terms of present legislation, Paralegal Advice Centres are not permitted to charge clients fees for giving them legal advice. Paralegal Advice Centres are thus mainly reliant on raising funds, which makes a FPO legal structure less desirable for this sector.
- On dissolution of a NPO, any surplus assets, after all expenses have been paid, have to be transferred to another NPO with similar objectives. In the case of FPO's, surplus assets are distributed to its members on dissolution.

3.5.2 *The size of the organisation*

From the above it should be clear that the formal establishment and on-going regulatory requirements are the most complex for a NPC, less complex for a trust and the least complex for a voluntary association.

Although a voluntary association can basically achieve the same objectives and exercise the same powers as a trust and NPC, it is far easier to establish and manage. A trust or NPC is more suited when the organisation is well established and fairly large with numerous members of staff, have a considerable budget and runs complex programmes.

3.5.3 *Funder's wishes or requirements*

An organisation may also sometimes be led by the requirements of funders, some of whom prefer greater rather than fewer regulatory mechanisms for NPO's.

Self-Assessment 3:

- 1) Discuss four advantages for an organisation to register as a NPO.
- 2) Why is it an advantage to be registered under the NPO Act when it comes to applying for government funding?
- 3) Provide three ways in which NPO's and FPO's are similar.
- 4) Provide four ways in which NPO's and FPO's are different.
- 5) Which of the three different types of NPO structures (trust, voluntary association or non-profit company) are the easiest to establish and to manage?

ACTIVITY 2:

The community of Hlopozwani located in rural KZN has become very poor since the closure of a shoe factory due to low prices of imported shoes. The shoe factory was the only substantial place of employment. Three hundred workers lost their jobs.

Since the closure in 2010, alcohol abuse especially amongst men rose dramatically.

There has also been an increase in cases of domestic violence cases, teenage pregnancies and HIV infections.

Following a community meeting attended by 350 members of the community, it was decided that the downward spiral must stop and that social problems must be addressed by engaging the provincial and local governments. It was also decided that a paralegal advice centre should be started to address the legal problems of the community.

You have been nominated to investigate the establishment of an organisation to run the advice centre.

Advise the community in writing on the following:

- a) Would it be advisable for the advice centre to be registered under the NPO Act? Why?
- b) Which legal entity would be most suitable for such an organization?
- c) What governance structures will best suite such an organisation?

Give reasons for your advice also referring to the requirements of the NPO Act.

FEEDBACK ON ACTIVITY 2:

Question (a):

In advising whether the advice centre should be registered as a NPO, it is important to discuss the advantages of doing so (discussed in para. 3.2.1 above); you could then also briefly discuss why it would be an advantage to register a non-profit rather than a for-profit organisation.

You should then mention the conditions with which the organisation has to comply before it can apply for registration (see the discussion in para. 3.2.4). You should then reach a conclusion: whether you recommend registration or not.

Question (b):

You should mention that the NPO Act provides for three different legal entities/structures. In advising on which entity/structure is most suitable for the purpose of registering an advice centre for this community, you would briefly compare the different entities/structures. It is recommended that you follow similar headings as those used above. You could then look at the needs of the centre and which entity/structure would accommodate such needs best.

One of the factors you could look at is whether the advice centre should be community-based. If so, then there should be membership, in which case a voluntary association may be the best entity/structure.

Question (c):

We suggest that you first briefly discuss the differences in the governing structures of the three possible entities. The type of governance structure depends a lot on whether the community should have a say in the running of the centre and in choosing who should manage it. If so, then a voluntary association with a management committee may be the best governing structure. You would have to say why this is so.

4. CONCLUSION

The NPO Act has opened doors even for small organisations to become better managed, more accountable and transparent and thus more professional. This should, in turn, ensure that a registered non-profit organisation will have an improved image and be regarded by the community, funders and other stake holders as being more dependable.

The three entities/structures provided for by the NPO Act, a voluntary association, trust and non-profit company, apart from none of them having the aim of making a profit, have quite different legal characteristics, structures and forms of governance.

5. SOURCES

- The Non-profit Organisations Act 71 of 1997.
- The Companies Act 71 of 2008.
- The Codes of Good Practice for South African Non-Profit Organisations.
- Social Investments (www.Tshikululu.org.za).
- R Wyngaard “Challenges when registering NGO/NPO’s”, article supplied by www.sangonet.org.za/ NGO Pulse.
- “A concise guide to the Non-profit Organisations Act 71 of 1997: what NPO’s must know”, Inyathelo.
- “Guide to the Non-profit Organisations (NPO) Act”. <http://www.etu.org.za/toolbox/docs/buildingguide.html>