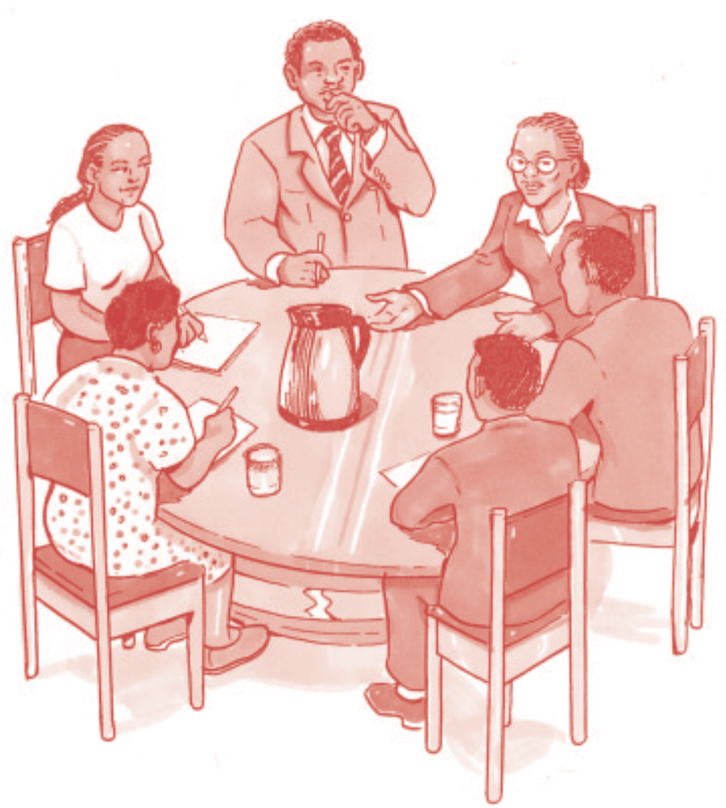

INGCEBISO NGOMTHETHO WEMIBUTHO ENGAJONGANGA KWENZA NZUZO (NPO) ACT

LEGAL RESOURCES CENTRE

Ushicilelo Lwazi lwesibini

LRC
LEGAL RESOURCES CENTRE

Olushicilelo lulungiselelwe ngabecandelo le NPO Legal Support Project phantsi kombutho we Legal Resources Centre (LRC) eKapa. I LRC ngumbutho ozimeleyo, ongajonganga ngeniso, kwaye onenjongo yokusebenzisa umthetho ukulwela ubulungisa,intando yesininzi, kunye nokuphunyezwa kwamalungelo entlalo nempilo. I NPO Legal Support Project icebisa ngezomthetho ekwakhiweni kunye nasekulawulweni kweMibutho eNgajonganga Ndzuzo.

Olushicilelo lujongene nokuncedisa iinkokheli zoluntu, imibutho engajonganga ndzuzo, abanikezeli ngenkonzo ezahlukeneyo, abanikezi ngcebiso ngomthetho, iiofisi zengcebiso kwakunye nabo bonke ababandakanyekayo ekwakhiweni nasekomelezweni kweMibutho eNgajonganga Ndzuzo.

Ushicilelo lwalombhalo uphunyezwe yinxaso evela kwiCharles Mott Foundation nakubaxhasi babucala.

iPhandwe futhi Yabhalwa ngu Mary Honey
Iguqulelwe ngu Sandile Dolweni
Ihlowe ngu Nomkhitha Mnukwa
Ushicilelo ngabakwa Amazon Media

June 2008

Qaphela oku, nagona kwenziwe uphando olunzulu phabhi kokuba kushicilelwe izimvo eziqulathwe kolushicilelo, kodwa ulushicilelo alijoliswanga ekuba lusetyenziswe njengomqulu oqulathe ulwazi oluninzi. Izicatshulwa zalomthetho kunye namashicilelo hlenze atshintshe roqo. Kuyingcebiso yethu ukuba umntu ajonge Umthetho kunye namashicilelo roqo kwaye afune enye ingcebiso kumcebisi wakhe.

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INGCEBISO NGOMTHETHO WEMIBUTHO ENGAJONGANGA KWENZA NZUZO (NPO) ACT

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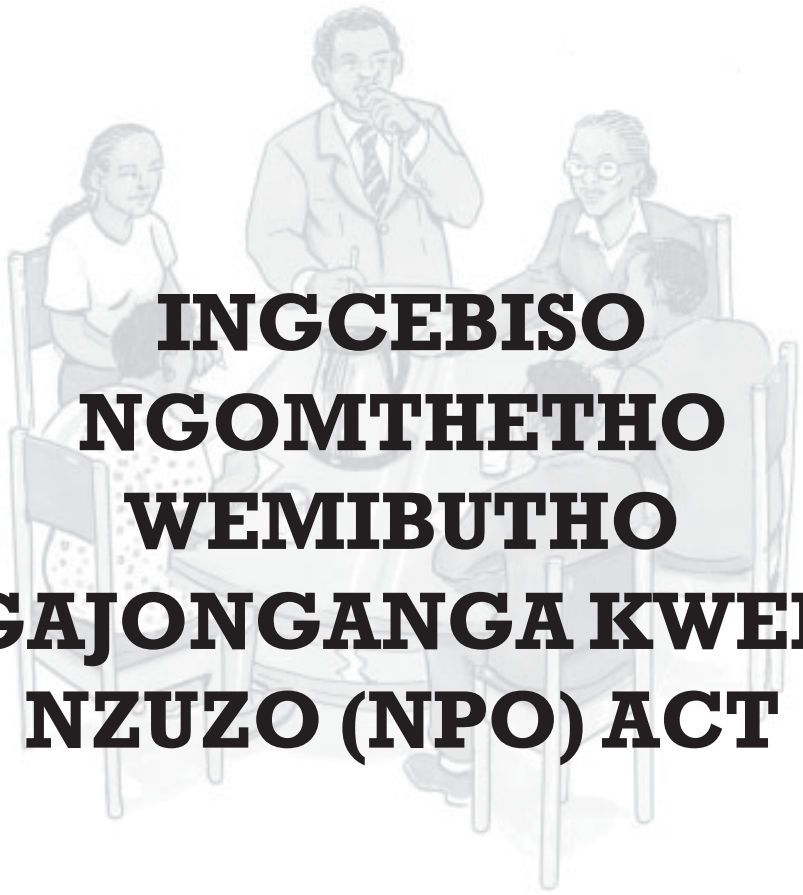

INGCEBISO NGOMTHETHO WEMIBUTHO ENGAJONGANGA KWENZA NZUZO (NPO) ACT

IMVELAPHI

Kuyimbono eyamkelekileyo ukuba umanyano lwabantu lubalulekile ekwakhiweni kwentando yoluntu kunye nophuhliso. Umahluko kwimibutho yoluntu eyahlukileyo, kukuba yakhiwe yimibutho yabucala, oko kutsho ukuba ayikho phantsi kolawulo luka Rhulumente. Singatsho ngeliphandle ukuba imibutho yabahlali ingohlulwa ngoluhlobo.

- Imibutho esekelwe indzuzo yamalungu ayo, ncakasana umbutho woshishino. Ngamanye amaxesha lemibutho ibizwa ngokuba yimibutho yeNdzuzo; kunye
- Nemibutho engasekelwanga ndzuzo okanye ingeniso yamalungu, kodwa esekelwe uphuhliso lwentando yoluntu okanye izinto abavumelene ngazo. Lemibutho ngamanye amaxesha ibizwa ukuba yimibutho engekho phantsi kuka Rhulumente okanye imibutho engajonganga ndzuzo.

Ngokomgaqosiseko, umgaqosiseko omtsha waseMzantsi Africa uqinisekisa ilungelo lenkululeko yokuzimanya kumntu ngamnye.

Elilungelo libalulekile ekusekweni kwemibutho yabahlali. Umzantsi Africa, ngokomthetho olawulayo nakumanye amazwe unika ilungelo lemibutho yabantu ukuba isekwe kwaye anikeze nendlela emayiphathwe ngayo lemibutho.

Lencwadi iyinxalenye yeencwadi ezijongene nemithetho esondele kwimibutho engajonganga ngeniso. Icacisa ngoMthetho olawula iMibutho eNgajonganga Ndzuzo, mthetho lowo omtsha oqale ukusebenza ngo 1997, kwaye ubalulekile ekuqalweni nasekulawulweni kweMibutho engajonganga Ndzuzo.

ISALATHISO NGOMTHETHO INON PROFIT ORGANISATION ACT KA 1997

1. INTSHAYELELO

Umthetho iNon Profit Organisation Act ka 1997, uqale ukusebanza nge 1 September 1998 emveni kwengxoxo ende ngomthetho nemigaqo phakathi kwemibutho yoluntu noRulumente.

Injongo yokuqala yomthetho weNPO kukwakha isimo esifanelekileyo sokusekwa nokumisa indlela yokulawula,nokuphendula ngokwenziwa kwexwebu lwemibutho engajonganga ndzuzo efana nezi zilandelayo:

“Iqumrhu lentembeko,Inkampani okanye imanyano yabantu”.

(a) eyakhelwe umbutho woluntu
(b) imali nempahla zalo azinikezelwa kumalungu okanye kubabaphathi be ofisi ngaphandleni komvuzo wabo. (Icandelo 1)

Lomthetho ugxilise ekubeni kubekho indlela yokubhaliswa kwemibutho engajonganga ndzuzo esele isebenza, enjengeNkampani zeCandelo 21 phantsi koMthetho weeNkampani, iQumru leNtembeko kunye noMbutho wasekuhlaleni, futhi kufuneka lemibutho ivumelane nemigaqo ethile kulomthetho, njekokuba: kufuneka inike ingxelo rhoqo ngonyaka kwaye ibenamalungu athile.

Ngokoke Iqumrhu lentembeko kufuneka libhaliswe kwi ofisi yeGosa leNkundla ePhakamileyo, iNkampani yeCandelo 21 ibhaliswa kwiGosa leeNkampani, Lamaqumrhu angaphinda akHethe ukubhalisa phantsi koMthetho we NPO ophantsi kweBhunga leNtlalontle.

2. NGOKUCHONGEKILEYO LOMTHETHO

- uvumela iQumru leNtembeko libhaliswe njengeNPO, libe nokuzimela ngokwasemthethweni. Nangona iQumru lentembeko libhaliswa kwiGosa leNkundla ePhakamileyo, phambi kokuba uyilwe loMthetho belingathathwa njenge qumrhu elizimeleyo eMthethweni ngaphandle kokubhalisela irhafu nokungakwazi kuhlawula matyala.

- Unikeza indlela yobhaliso lweMibutho yabahlali ephantsi komthetho "jikelele" okanye uMthetho ongabhalwanga. Phambhi kokuba lomthetho uphunyezwe, imiButho yabaHlali ibingabhaliswa nguRulumente. Lonto yenze intsokolo kulemibutho nakubaxhasi ngxowa bayo aba befuna isiqinisekiso sasemthethweni.

- LoMtheto unyanzelisa ukuba,phambi kokuba kubhaliswe iNPO kufuneka uMbutho ubengowoluntu.

Umphathiswa anganikezela iiNPO izixhamlo phantsi (kweCandelo 11). Ezizixhamlo zinikezelwa kwiNPO ezhibhalisiweyo. Imibutho engajonganga ndzuzo efuna ukuxhamla phantsi koMthetho weLotarries kufuneka ibhalise phambi kokuba ibenako ukuxhamla kwiLoto.

Lomthetho ukhuthaza futhi unyazelise iiNPO zikwazi ukulawuleka ngocwagco nangokucacileyo ukwenzela uluntu lukhuthazeke kwaye futhi neminye imibutho ibenokubhalisa, Kusafuneka kuvavanyiwe ukuba ubhaliso lwemibutho engajonganga ndzuzo luyasebenza na ekumiliseni loMthetho ukhoyo.

3. INJONGO YALOMTHETHO

Injongo yalomthetho kukwakhiwa kwesimo esinokuphumelelisa intsebenzo yeNPO. Ngoko loMtheto unlika isiseko sokumisa nokusebenza ngokulungileyo kweeNPO.(candelo2).Kubalulekile ukuba injongo zalomthetho zicaciswe kakuhle. Ngokowembali uMthetho iFundraising Act wachithwa ngulomthetho weNPO,wawufudula ulawula unyuso ngxowa loluntu, kodwa ek wasetyenziswa kakubi nguRhulmente wengcinezelo ekulweni imibutho echasene naye. Injongo zalomthetho zicaciswe phandle ukunqanda impatho'mbi yangaphambili.

4. ULAWULO LOKUSEBENZA KOMTHETHO

Kwimiba ethile loMthetho uyalinciphisa ilinge lokuba ubani ebenokufaka isikhalazo phambi kokuba kufike ixesha elithile kunye nenkcukacha ezinokuthi zifunwe liBhunga. Ezizinciphiso zikhusela ukuxhatshazwa kunye nokusetyenziswa kakubi kwezikhidla ngamagosa ebhunga. Umzekelo, emveni kokuba IGosa elikhulu leBhunga lifumene isicelo sokubhalisa, kufuneka lithathe isigqibo phambi kokuba kuphele inyanga ezimbini, emveni kokuba lanelisekile ukuba isicelo sifakwe ngendlela efanelekileyo (candelo 13(12). Abenzi zicelo abafumana ubunzima nempatho embi banayo indlela yokuphumeza izikhalazo zabo.

5. UBHALISO LWEENPO

Imigaqo yobhaliso

(a) uchaze igama lombutho;
(b) uchaze injongo zawo eziphambili nezilandelayo.
(c) Uchaze ukuba imali kunye nempahla yawo ayinikezelwa kumalungu awo, ngaphandle kwembuyekezo efanelekileyo.
(d) Uchaze kuba umbutho uzimele geqe kwaye wohlukile kumalungu ombutho.
(e) Uchaze ukuba umbutho uyakusebenza nokuba kungatshintshwa amalungu.
(f) Uqinisekise ukuba amalungu akanagunya kwimpahla yombuthu ngesizathu sobulungu.
(g) Ucacise amandla ombutho.
(h) Unikeze ngendlela umbutho ozakulawulwa ngayo.
(i) Ubeke idlela yokulawula intlanganiso kunye nenani elifunekayo phambi kokuba intlanganiso iqhubeke, futhi nokugcinwa kwemizuzu
(j) Ibeke indlela yokuthatha izigqibo.
(k) Ichaze ukuba imali zombuto zisetyenziswa ngengxowa yebhanki.
(l) Inikeze imini yokuphela konyaka wombutho.
(m) Inikeze idlela yokutshintshwa komgaqosiseko
(n) Inikeze indlela yokupheliswa okanye yokubhangisa umbutho. Ichaze futhi ukuba emveni kokubhangiswa kombutho kwahlawulwa namatyala awo, zonke izinto ezishiyekayo zizakunikezelwa kumbutho onenjongo ezifana nezalombutho.

Incwadi zombutho okanye umgaqosiseko kufuneka zihambelane nemimiselo yalomthetho ukuze ubenokubhaliswa. Imigaqo enyanzelisayo ithi:
“ (2) Ngaphandle kokuba kubekho omnye umtheto weNPO okanye kufakwe eminye imiqathango kulo usebenzayo, Umgaqsiseko ofunwa ukubhaliswa yiNPO kufuneka:

Ezona ngongoma ezinyanzeliswa ngulo mthetho ekubhalisweni kombutho zibandakanya amacandelo aveza ezimpawu:

- Kuvezwe ukuba iNPO (nokuba ngumbutho wabahlali, Iqumrhu lentembeko okanye Inkampani yecandelo 21) yohlukile kwimibutho yendzuzo, (12(2) (b,c,f & o));
- Ichaze ukuma kwe NPO ngokwaseMthethweni,futhi kuchazwe ukuba iNPO izimele geqe kumalungu ayo, candela 12(2) (d,e));
- Kufuneka kuvezwe kumaphepha okuqalwa kweNPO zonke izalathiso zokuqala iNPO 12(2) (g-n));

Umgaqosiseko weNPO ungabandakanya eminye imiqathango ephawuliweyo kwi candelo 12 (3). Lamacandelo anganyanzelekanga avele rhoqo kwiNPO ezinamalungu

Ibhunga livunyelwa ukwala ukubhalisa iNPO xa iNPO ingayifezi imigaqo yobhaliso emisiweyo. Igosa eliphakamileyo kufuneka libhalele umbutho othe akaphumeza izinto ezilindelekileyo elubhalisweni kombutho, candelo13 (3-6)

6. IMIPHUMELA YOKUBHALISA

Ixwebhu lokubhalisa lisisiqinisekiso esaneleyo esichazayo ukuba umbutho ubhalise ngokusesikweni kwaye uzimele (candelo16 (1). INPO ihlala ibhalisiwe ide isuswe ekubhalisweni.

Isibheno ngokungavunyelwa ukubhalisa iNPO:
Xa sithe sachithwa isicelo sobhaliso lweNPO, umenzi sicelo unikwa inyanga enye ukuba enze isibheno kwisigqibo eso kwiBhunga. Emveni kwenyanga ezintanthu iBhunga lesibheno lifumene incwadi yesibheno, kufuneka lisimamele esosibheno (candelo 14(1-3)).

Uxanduva lweNPO ekugcineni incwadi zezimali, nokunikeza ingxelo kunye namaxwebhu.
Emveni kokuba iNPO ibhalisiwe kufuneka inikeze ingxelo ezithile ezinjengezi:

- Ibonise kwincwadi zayo ukuba ibhalisiwe futhi ibonise nenombolo zobaliso (candelo16 (3)
- Ugcine kwaye ukhusele incwadi zongeniso mali ezihamba namaphepha esiqenisekiso salomali. Icandelo (17 (1) (a) and (3)
- Ubhale ingxelo ngezimali zingekapheli inyanga ezitandathu emveni kokuphela konyaka mali, kucaciswa ngemali engenileyo nephumileyo kunye neshiyekileyo (candelo 17 (1)(b))
- Ufune Igosa eliphononononga incwadi zemali linikeze ingxelo, ecacisa ukuba incwadi zombutho zibhalwe ngokomgaqo wogcinomali futhi imali zisetyenziswa ngokufanelekileyo. (candelo17 (2)).
- Unikeze kwibhunga ingcaciso ngxelo kakuhle kunye noxwebhu lwemali, ingxelo yegosa eliphononononga incwadi zemali (candelo 18 (1) (a)) zingekapheli inyanga ezisithoba emveni kovalonyaka.
- Unikeze kwibhunga inkcukacha zamalungu awo,nokuba onyulwe kwinyanga edlulileyo, idilesi yombutho kunye negxelo yokutshintsha kwedilesi emvakwenyanga, neyiphi igxelo enothi ifunwe liBhunga ekuqinisekisweni ukuba umbutho uhambisana nomgaqo siseko kunye noMthetho. (candelo 18 (1) (b-e)).

Ukungahambisani noMthetho kunye nokupheliswa kobulungu

Xa iNPO ingahabisani noMthetho kunye nomgaqosiseko wawo, emveni kokuba ifumene incwadi elumkisayo nemiqathango, ingaphuncukana nobulungu bayo. Ingagqithiselwa nakuMpolisa omZantsi Africa ukuba aphande ngolwaphulomthetho, xa umbutho kubonakala usaphula umthetho(candelo 20 - 21).

Utshintsho lwegama nomgaqosiseko, ukepheliswa kobulungu, ukupheliswa nokubhangiswa kombutho.

Umthetho unikeza indlela yokutshintshwa kwegama nomgaqo siseko kwiNPO (candelo19);ukuziphelisela nokubhangisa umbutho (candelo 23).

Ukufumaneka kwamaxwebhu eluntwini

Umthetho unikezela ilungelo kuluntu, ukuba lifumane amaxwebhu afakwe yimibutho kwi bhunga, ngoko kuqinisekiswa isiseko salomthetho esivumela ukuba zonke izinto zingafihlwa (candelo 25).IBhungu rhoqo ngonyaka kufuneka lishicilele ixwebhu elinika amagama azo Zonke iiNPO ezibhalisileyo, nezibhangisiweyo kunye nezichithiweyo (Section 24).

Ulwaphulomthetho

Umthetho wenza ukuba kubelulaphulo'mthetho ukugqithisa impahla yeNPO kwenye enenjongo ezifanayo, xa isabhangiswayo(candelo 29 (1). Futhi ayivumeli ukuba iNPO engabhaliswanga yenzengathi iBhalisiwe, okanye inikeze ngamaxwebhu obuxoki kwiBhunga (candelo 29 (2))

Ukuchithwa kweMithetho nolugiselelo olutsha

Lomthetho uchitha iFund-Raising Act 107 ka 1978, ngaphandle kwezicatshulwa ezimbini zeDisaster & Relief Fund. Imimiselo yexeshana yenziwa futhi ibandakanya oku:

- Ukusebenza kwebhunga le Fund-Raising luthatyathwe libhunga le NPO elitsha ; (candelo 34(1))
- Imibutho eyayibhaliswe phantsi komthetho weFund-Raising yabhaliswa okwexeshana phantsi kweNPO kwiminyaka emibini yenguqulelo ephele nge 31 August 2000.

Zibhaliswa njani iiNPO?

IiNPO kufuneka zijonge amaxwebu okuqalwa kwazo ukuba ziyahambisana ne candelo 12(2), ezinjengo Mgaqosiseko, uMbuthowoluntu, Impepha zequmrhu elizimeleyo okanye zenkampani phantsi komthetho weCandelo 21. Ukuba azihambelani kufuneka amaxwebu atshintshwe.

Emveni koko INPO kufuneka ithumele amaxwebhu afanayo nephepha lesicelo kwiBhunga lweeNPO. Iphepha lesicelo lifumaneka kwiBhunga leNPO , kwaye kufuneka libuyiselwe kwakulo kuledilesi Department of Welfare: Private Bag X901, Pretoria 0001 Umnxeba: 012-3127 676

ULWAZI OLUNGEZIWEYO

Ucandelo lweNtlalontle,Ibhunga Le NPO's Imithetho echaphazela imibutho engajonganga nzuzo. Ushicilelo Lwazi lokuqala :1999.

Honey, M Icandelo elijongene nokuncediswa kweMibutho engajonganga Nzuzo yiLegal Resources Center. Imibutho eyahlukileyo esetyenziswa yimibutho engajonganga nzuzo.Ushicilelo Lwazi lokuqala: 2000

Rosenthal R kunye no Walton M. Izalathiso ngeNkampani zeCandelo 21, iQumru lentembeko nemiButho Yoluntu: Isicatshulwa silungiselelwe iLegal Resources Centre

Umgaqosiseko woMzantsi Africa 108 ka 1996

uMthetho weMibutho eNgajonganga Kwenza Nzuzo 71 ka 1997