

## **Institutionalising the South African community-advice office sector: Is it worth it?**

### **Introduction**

Access to justice and legal empowerment are two sides of the same coin. Arguably, the more individuals and groups are legally empowered, the better they will understand and seek access to justice. Of the seventeen Sustainable Development Goals heralded by the United Nations (UN), access to justice figures prominently. Specifically, Goal 16 (SDG16) is to: “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.<sup>i</sup> At the 2016 OECD Expert Roundtables on Equal Access to Justice, held jointly with the Open Society Foundation (OSF), high level officials, including Mr Tshililo Michael Masutha, Minister of Justice and Correctional Services, South Africa, “garnered support for innovative policies to achieve SDG target 16.3 through effective national access to justice strategies”.<sup>ii</sup> But what type of innovative access to justice policies have been promulgated in South Africa, inclusive of the community advice office (CAO) sector?

The CAO sector has a long track record of facilitating legal empowerment and access to justice in South Africa. Contemporarily, CAOs meet the needs of historically marginalised communities, including those who do not wish to access rule of law orthodoxy to address a wide range of socio-legal and socio-economic issues.<sup>iii</sup> Recent studies show that there are between 320<sup>iv</sup> and 367<sup>v</sup> CAOs in South Africa. CAO services are free and delivered by

community-based paralegals (CBPs) who operate and manage the offices. For more than a decade organisations such as the National Alliance for the Development of Community Advice Offices (NADCAO) and the Association of Community Advice Offices of South Africa (ACAOSA) have worked to advance laws and policies that address sustainability and institutionalisation of the CAO sector.<sup>vi</sup> In 2015, the Human Sciences Research Council (HSRC) issued a policy brief advocating for public funding of CAOs.<sup>vii</sup> That brief, as well as the advocacy work of NADCAO and ACAOSA point to the crucial need of case management strategies as a key component of generating sustainability of the CAO sector.

Toward that end, this policy brief presents the results of a study on exploring case management strategies for the CAO sector. That study was based on a database created and maintained by the Centre for Community Justice and Development (CCJD), which is a non-governmental organisation in Pietermaritzburg. A human rights organisation, CCJD also oversees fifteen independent CAOs in KwaZulu-Natal. CCJD executes an accredited paralegal training programme. All paralegals working in the fifteen CAOs have a national certificate in paralegal studies. In 2017, the Department of Justice and Constitutional Development revealed that a draft bill pertaining to the CAO sector is in the pipeline.<sup>viii</sup>

## Why institutionalise the South African CAO sector?

The meaning of institutionalisation of the CAO sector is subject to a variety of interpretations and expectations, including independent statutory recognition and regulatory framework or being included as part of laws governing legal aid. Irrespective of the form that institutionalisation of the CAO sector takes, subject to stakeholder consultation, one of the reasons for institutionalising the sector is to empower the tremendous amount of individuals and groups across the African continent who's preferred or only gateway to access justice is the CAO in their local community or village. Some of the very same areas where CAOs are located experience low levels of economic development and citizens are plagued by poverty, unemployment and lack of legal awareness of their rights. According to the Poverty Trends in South Africa report for 2006 to 2015, 30.4 million people (55.5% of the population) were living in poverty and the majority live in rural areas.<sup>ix</sup> SDG16 envisages effective access to justice as “a crucial determinant of inclusive growth, citizen well-being and sound public administration”.<sup>x</sup> This vision is consistent with the South African National Development Plan.<sup>xi</sup> Regardless of the form in which CAO sector institutionalisation may manifest, case management information strategies are central to sound public administration which strengthens institutions.

## Why do case management practices matter in an information and networked society during a global era?

The 21<sup>st</sup> century finds us in a global economy with cross-continental networks that are at once local and global. Information technology is distinguished as a hallmark in this era. Transparency and access to

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information are key components across all sectors. The CAO sector is no exception.

Government, private and civil society donors that support CAOs are entitled to reporting, monitoring and evaluation systems. These will reveal outcome-based performance or the lack thereof. Simultaneously, how information is collected and the way in which knowledge is constructed, applied and disseminated should reflect the diversity of the individuals and communities being served. In other words, case management practices should be able to generate information and knowledge that recognises and respects different ways of knowing. This is particularly important for people in African communities and rural villages who live their lives in light of African ways of knowing.

## Why do African ways of knowing matter in the community advice office sector?

African ways of knowing involve more than considering an African context. African indigenous knowledge systems (AIKS) encompass certain values and beliefs systems.<sup>xii</sup> African worldviews focus on holistic understandings and integrated approaches to various states of beings, including the role of ancestors in everyday life.

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In African ways of knowing collective duties are prioritised over individual rights, restorative justice is deemed more useful than adversarial legal proceedings and resolutions are context based, not determined by isolated legal precedents.<sup>xiii</sup> Research from the CCJD database and fieldwork conducted at CAOs reveal that African ways of knowing should be considered in policy promulgation, regulatory frameworks and hence,

institutionalisation of the CAO sector. This can advance effective access to justice and legal empowerment that is culturally competent and prospective, not just retrospective of socio-legal and socio-economic matters handled by CBPs.

## Research Approach

The multi-faceted research approach includes five components undertaken concurrently and interactively. First, data were quantitatively mined from the CCJD database to conduct a census survey of fifteen CAOs about case intake and case outcomes from 2014 to 2017. Annual CAO reports and monthly consolidated reports of outreach activities were reviewed. A descriptive time-series analysis<sup>xiv</sup> was employed through Excel software. Second, a cost-benefit analysis of seven CAOs, applying the cost approach<sup>xv</sup> was conducted using the CCJD database, CCJD and CAO financial records and a desktop study. Third, qualitatively, case narratives were sourced from the database. Finally interviews of CBPs and focus groups of justice service recipients were conducted. The Input-Activities-Output-Outcome-Impact model served as a conceptual framework among others.<sup>xvi</sup> Qualitatively data were analysed by a combination of content, matrix and thematic analysis techniques using a lens susceptible to African ways of knowing.

## Findings

Results from the quantitative mapping of outputs, activities and outcomes showed a consistent trend in total case intake over the study period, an average of 8 526 cases per year. The database protocol provides for nine case categories: child abuse, domestic violence, general crime, labour problems, legal advice, maintenance, social problems, rape/sexual offenses and unspecified cases. Of those categories, the highest percentage of cases stemmed from domestic violence and legal advice categories. The nine domestic violence subcategories include physical, emotional and economic abuse as well as intimidation and harassment others. Legal advice cases are further subdivided into sixteen types of cases such as paternity disputes and road accident injuries.

The database tracks the percentage of cases remaining open per category in the year of intake as well as the nature of resolution or non-resolution.

“The database tracks the percentage of cases remaining open per category in the year of intake as well as the nature of resolution, non-resolution, and types of case closure.”

The types of case closure are likewise captured. The database further reveals the percentage of time spent on types of legal services rendered. These include accompanying a client to government offices or elsewhere such as to financial institutions, case management, counselling, follow-up, legal advice, mediation, strategic referrals through letters and phone calls along with taking briefs of clients' stories. Of those legal services, the greatest amount of time is spent listening to clients' stories and taking briefs. Certain categories and types of cases are more prevalent in some CAOs than others, depending on the context and the environment of the CAO.

Outreach activities were not part of the database. However, paper records were reviewed to discover time spent on outreach activities which was factored into the cost benefit analysis.

As to the cost benefit analysis, benefits outweighed the costs as shown in Table 1. A benefit cost ratio of 2 indicates that a programme or project under cost benefit analysis is considered of value.<sup>xvii</sup> The ratio discerned by this study is 6.01. This reveals that the CAOs are worthwhile and deserving of sustainability and institutionalisation.

The cost benefit analysis was complemented by application of the IAOOI model to interview and focus group data.

Table 1

<p><i>Benefit Cost Ratio</i></p> $= \frac{\text{Total Value of Benefits}}{\text{Total Value of Costs}}$	
Total Benefits*	R115 758 280.96
Total Costs**	R19 266 580.29
Net Value***	R96 491 700.00
Benefit Cost Ratio	6.01
<p>*Calculated tangible and intangible benefits from the services of the CAOs over the 2014 to 2017 study period.  ** Total Cost incurred by CCJD over the 2014 to 2017 study period.  *** Net Value is calculated as the difference between Total Benefits and Total Costs.</p>	

Case narratives from the database revealed the extensive networks across which CBPs work as well as use of restorative justice and multi-level ways of handling a complex problem. The use of IAOOI model as the backdrop for analysing interview and focus group data revealed the interactivity between the components of the model when it comes to community-based justice. It established benefits of CAO and CBP services but shed little light on costs. Activities and outcomes discerned from CBPs and service recipients are useful in determining indicators for what CAO sector services should look like. Service recipients were quite candid about their distaste for how they are treated by government employees and just as forthcoming regarding their trust and dependence on CBPs.

There is consistency between the trends shown by the time series analysis and results of interview and focus group data. For example, on the one hand, the census survey demonstrated that the greatest amount of was time spent taking briefs and rendering legal advice. On the other hand, CBPs indicated the importance of listening to service recipients. In turn, service recipients felt that CBPs allocate all the time and effort necessary to resolve their problems, even after working hours – at times coming to homes of the CBPs seeking relief from urgent matters. Notably, service recipients were vocal in response to questions about CAO and CBP reform, insisting that even if partnerships with government departments are strengthened and even if public funding becomes available, CBPs must not be co-opted by government but continue to provide services of the quality currently rendered.

Taken as a whole the study found that:

- Cost benefit analysis evidence presented demonstrates that CAOs are worthy of sustainable funding and appropriate institutionalisation.
- Case management strategies are central to successful CAOs.
- Database case management should be centralised on the one hand but contextualised on the other hand with case categories that fit the needs of the community in which the CAO is located.
- Case management databases allow for time series analysis, including regression analyses although that was not the aim of this study.
- Case management databases allow for post-evaluation cost benefit analyses.
- Case management strategies are the hallmark to access to justice whilst outreach activities seem well suited for wider implementation of legal empowerment.
- Administrative maintenance of electronic databases and filing paper reports are tedious tasks for CBPs who prefer to focus on day-to-day justice delivery services for clients.
- Maintenance of administrative databases are always evolving requiring consistent updates for which CAOs must budget.
- External ongoing monitoring and evaluation of database and paper record activities are required.
- Lack of sustainable funding curtails case follow-up and closure and derails outreach activities.

## Policy Implications

- National and local efforts, including the Department of Justice and Constitutional Development, the South African National Treasury and district and local municipalities fall short of supporting CAOs – even though CBPs take on tasks that government offices should handle in a democratic society.
- Lack of statutory recognition often pre-empts justice service delivery by CBPs and CAOs, including employers of community members with labour issues being resistant to CBP/CAO efforts and initiatives.

## Policy Recommendations

- Policies promulgated or laws enacted regarding the CAO sector only be undertaken with active involvement of service recipients from the outset.
- Policies and laws governing the CAO sector must take African indigenous knowledge into account.

<sup>i</sup> <http://www.un.org/sustainabledevelopment/peace-justice/>

<sup>ii</sup> <http://www.oecd.org/gov/delivering-access-to-justice-event.htm>

<sup>iii</sup> Dugard & Drage (2013). To whom do the people take their issues? The contribution of community based paralegals in access to justice in South Africa, Justice and Development Working Paper 21. Washington, DC: World Bank; Martins, BW Martins, W (2016) Access to justice: The role of community-based paralegals in community restorative justice in rural KwaZulu-Natal. Doctoral thesis, University of KwaZulu-Natal.

<sup>iv</sup> Human Sciences Research Council (2014). Towards a sustainable and effective Community Advice Office sector in South Africa: A cost benefit and qualitative analysis. Available at: <http://tsdp.co.za/wp-content/uploads/2015/07/Cost-Benefit-Analysis-Community-Advice-Offices-in-South-Africa-HSRC.pdf>. Accessed October 2017.

<sup>v</sup> Buckenham, K (2014). The profile and positioning of the Community Advice Office sector in South Africa. A study commissioned by the National Alliance for the Development of Community Advice Offices (with authors).

<sup>vi</sup> Long-term sustainability of community advice offices, [www.raith.org.za/projects/Nadcao-community-advice-offices](http://www.raith.org.za/projects/Nadcao-community-advice-offices); <http://nadcao.org.za/wp-content/uploads/2016/04/KZN-Sustainability-Options-Report-NADCAO-Version-2.pdf>

<sup>vii</sup> <http://www.hsrc.ac.za/en/research-data/keywords?keyword=COMMUNITY+ADVICE+OFFICES>

- Case management strategies should be required of institutionalised CAOs to ensure sound public administration in the CAO sector.
- Institutionalised CAOs should not be standardised to the extent that their respective identities no longer reflect the context of the individuals, groups and communities served.

<sup>viii</sup> <http://www.sabinetlaw.co.za/justice-and-constitution/articles/draft-bill-community-based-advice-offices-pipeline>

<sup>ix</sup> Poverty trends in South Africa (2017). An examination of absolute poverty between 2006 and 2015 / Statistics South Africa. Pretoria: Statistics South Africa.

<sup>x</sup> <http://www.oecd.org/gov/access-to-justice.htm>

<sup>xi</sup> National Planning Commission (2011). National Development Plan: Vision 2030 (NDP). Pretoria: Government Printer. Available at [http://www.gov.za/sites/www.gov.za/files/devplan\\_2](http://www.gov.za/sites/www.gov.za/files/devplan_2). Accessed: November 2017.

<sup>xii</sup> Odora Hoppers CA (2001). *Indigenous Knowledge and the Integration of Knowledge Systems: Towards a Conceptual and Methodological Framework*. Pretoria: HSRC.

<sup>xiii</sup> Ruffin, F 2018 Land governance in the context of legal pluralism: Cases of Ghana and Kenya. In Akinola, AO and Wissink, H (eds) *Trajectory of Land Reform in Post-Colonial African States: The Quest for Sustainable Development and Utilization*. New York: Springer.

<sup>xiv</sup> Yin, RK (2014). Case study research: Design and Methods. Thousand Oaks: Sage.

<sup>xv</sup> Murphy, K.E. and Simon, S.J., (2002). Intangible benefits valuation in ERP projects. *Information Systems Journal*, 12(4), pp.301-320.

<sup>xvi</sup> Parsons, J., Gokey, C. and Thornton, M. (2013). Indicators of Inputs, Activities, Outputs, Outcomes and Impacts in

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[www.dpme.gov.za/.../Policy%20Framework/Framework%20for%20Managing%20P](http://www.dpme.gov.za/.../Policy%20Framework/Framework%20for%20Managing%20P). Accessed October 2017.

<sup>xvii</sup> Persson, J. and D. Song (2010). The Land Transport Sector: Policy and Performance. *OECD Economics Department Working Papers*, No. 817, OECD Publishing, Paris, <https://doi.org/10.1787/5km3702v78d6-en>.