

# Executive Summary

## Towards a Sustainable and Effective CAO Sector in South Africa: A Cost Benefit and Qualitative Analysis

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## Executive Summary

1.

Despite advances in access to legal services, barriers continue to persist in democratic South Africa. Furthermore, these barriers are strongly associated with poverty, location, gender and education levels.

The South African Government, in terms of the Constitution as well as under various international instruments, has an obligation to ensure access to justice for all citizens, as a basic human right. However, many communities, and particularly rural communities, do not have access to legal advice as a result of cost, ignorance of the existence of state equivalent centers, a fear of engaging the legal aid system, and the distances they have to travel to get to such centers. In addition, in poor and/or rural communities served by Community Advice Offices (CAOs), many potential social service beneficiaries are unaware of their eligibility for social benefits, or are daunted by the administrative requirements involved in applying for them.

South Africa has a community-based CAO sector which goes back to the 1980s, and which provides first stop or 'early action' paralegal services, as well as a range of other advice and assistance functions. This sector, however, is ailing, primarily as a result of financing challenges, and there are clear prima facie reasons to consider the possibility of full or part fiscal funding of CAOs as a means of enhancing access to justice, as well as increasing social welfare in a long-term sustainable manner.

The objective of the study is accordingly to ***provide credible, evidence-based arguments to inform the policy debate around public funding of CAOs in South Africa***. Three fundamental research components are included: a desk-based review of the development of the CAO sector, a comprehensive fieldwork based qualitative and quantitative analysis of the current role and challenges of existing CAOs in South Africa, and a cost-benefit analysis which considers the economic argument in favour of core funding, by the state towards South African CAOs.

2.

The ***Desk-based Review*** conceptualizes CAOs as small, non-profit organisations that offer free basic legal and human rights information, advice and services to people who are marginalised through poverty, social circumstances and geographical location. They are non-partisan and non-political in their operation. CAOs deliver their services with limited funding, where necessary by pooling community resources and staff labour and time capacity.

Some challenges CAOs face may be regarded as inherent to the scope of their potential functions and the complexity of community needs they seek to respond to. Others, however, are rooted in structural dynamics which are in principle addressable. In the literature the challenge of funding appears as the main challenge which plagues the CAO sector currently. Other challenges include the absence of formal regulation, service standardization, adequate acknowledgement and recognition, and, as a result, uneven service provision in some instances.

The funding challenge generates a range of problems not only for the sustainability of the sector, many of which relate to human resource capacity, including the inability of the sector to retain staff once they have received some basic training and work experience in the community context.

3.

The **Fieldwork** took place in mid-2014 and entailed visits to 19 CAO offices in 5 provinces, Eastern Cape, Free State, Gauteng, Limpopo and Western Cape. At each CAO, key individuals were interviewed, focus group discussions were conducted with CAO staff, and service users were interviewed. In addition, the field work included focus group discussions with the CAO Provincial Fora of each of the 5 selected provinces. The results of this field work fed into the cost-benefit analysis, but have considerable additional worth as a rich picture into the nature of the sector and its users currently.

4.

The findings from the field work (**Focus Groups and Key Interviews**) component of the study are as follows:

*A. Community Advice Offices (services/ asset to community)*

- Estimates of the number of CAOs by province are complicated by a number of factors, but CAO numbers range from 22 to 65 for the provinces included in the study.
- Almost half of CAO offices (47% or 9 of the 19 offices) describe themselves as becoming operational in the 2000's.
- Virtually all the offices included in the field work reported being fully functional/ operational, that is they are open from Monday to Friday during normal work hours, and typically also make themselves available to working overtime including working after hours and on weekends.
- Beneficiaries served per day vary between CAOs and at different times, but may average around 10 per day.

- The community challenges identified by CAOs are largely aligned with those identified in the NDP as well as surveys such as the HSRC's SASAS.
- CAOs respond to community need as well as programmatic funding opportunities and their core paralegal function to deliver a wide-ranging, flexible and locally responsive mix of services.
- CAOs generally feel that they are able to meet the needs of their communities, notwithstanding a range of challenges, though formal case monitoring is not effectively implemented.
- CAOs have different conceptions of their primary and secondary functions, which depends in part on funding opportunities.
- Asked after specific successes achieved by their CAOs, staff and provincial fora representatives give a picture of the varied and valuable contribution CAOs make to community wellbeing.

#### *B. Community Advice Offices (resources/ challenges)*

- The primary challenge identified by the overwhelming majority of CAOs is a lack of funding, and many other challenges, such as staff retention, ultimately emanate from this challenge.
- Secondary challenges identified suggest the complex stakeholder relations CAOs must negotiate and, in some instances, a non-optimal relationship with sub-national government and municipalities in particular.
- CAOs face human resource challenges related to staff retention, skills required for the job etc., but display a strong resilience as regards doing what can be done, including referral.
- Few if any CAOs have the required material resources to fully fulfill their functions.
- CAOs use a variety of office spaces, some of which are adequate, many of which are not.

#### *C. Organisational structures*

- CAOs for the most part have a clear and sound leadership and management structure, though implementation lags and the role of the Board in particular could be enhanced.
- The newly established coordination and integration model of Provincial Fora and Provincial Hub Offices has significant potential for strengthening the sector, though it is uncertain about the extent to which the hub model has been deployed in all provinces.
- CAOs make use of both staff and volunteers.
- Many CAOs report good relations with government departments, but adversarial relations also exist and inhibit community welfare.
- In all CAOs, some form of financial management system is in place, but these differ in degrees of formality.

#### *D. Community Advice Offices (accessibility)*

- The accessibility of CAOs for communities varies and imposes differing costs on beneficiaries as well as the CAOs themselves.

#### *E. Funding of the Community Advice Offices*

- CAO funding is generally inadequate to conduct operations effectively; virtually no CAOs operate with a funding amount that allows them to fully do their work.
- The funding picture differs across province, both in terms of adequacy and typical funding sources.
- Fundamental consequences of the funding context include precarious security of premises, self-exploitation, volunteerism, and a reliance on community resources which are themselves in short supply.
- Even CAOs that appear to do comparatively well struggle with secure, predictable funding which would enable medium- and longer term planning.
- CAOs that have comparatively secure and adequate funding tend to have this funding for other uses than paralegal related services; in other words, even in these instances their paralegal work is likely to be underfunded.

5.

The ***Service Beneficiary Survey***, which comprised 186 individual interviews in five provinces and at 19 CAOs, explored who, why and how the users used the CAOs. In addition, the survey also assessed their perception of the quality of the service and what they think about alternative service providers. The results are highlighted here but discussed in detail and graphically represented in section 6

#### *A) Who are the users of CAOs?*

The largest proportion of respondents reported having some secondary education (38% or 70) followed closely by 62 respondents (34%) who reported either having no education, some primary education or having completed their primary education. The majority of respondents (48%) fall within the R1001-R3000 per month income category. The smallest proportion of respondents (18%) reported earning more than R3000 per month.

#### *B) Why do they use CAO services?*

Over a third of respondents (40%) highlighted assistance with legal cases or labour disputes as the main reason for their visit. This also included assistance with divorce, harassment, payment of damages and widow inheritance. About one in ten of respondents revealed assistance with IDs, birth certificates or marriage certificates as the reason for their visit, and 14% of respondents indicated they required assistance with social problems including children not attending school and various poverty related issues.

The largest proportion (48%) of respondents who reported visiting the office for assistance with birth certificates and IDs earned less than R1000 in the monthly household income. The largest proportion (61%) who reported needing assistance with pension and grant applications earned between R1001 and R3000. 71% of respondents sought assistance with financial matters such as loans or/ and bonds earned between R1001 and R3000 income per household monthly. Lastly, the mid-level earning respondents also revealed the largest proportion (57%) of respondents who reported needing assistance with social problems.

*C) How do they use CAO services?*

The survey revealed that most CAO beneficiaries have been using their respective CAOs for a period greater than one month but less than six months. The data also illustrate that communities utilise the services of CAOs frequently. A large proportion of respondents indicated that they visit the respective CAOs in their community twice or more than twice a month.

However, the data also showed that most of the CAO users visit the CAO more than once for the same issue or inquiry. The evidence from the other data sources suggests that the complexity of some of the cases dealt with by CAOs requires more than one visit by beneficiaries. Additionally, cases the CAOs deal with most often involve government departments. This may delay the process depending on the nature of the case and the government department and the processes involved.

*D) How do they feel about the quality of CAO services?*

When asked about their satisfaction with CAOs services concerning their helpfulness, professionalism and level of knowledge about the services offered, an overwhelming majority of respondents (96%) indicated that they were very satisfied with the helpfulness of CAO staff. None of the 186 survey participants indicated that they experienced or witnessed any of the CAO staff members receiving or being paid a bribe.

*E) What do they think of alternative providers of similar services?*

The survey also included questions to ascertain respondent's knowledge about the availability of alternatives in the event that the CAO did not exist. Respondents were asked what they would do about their issue if the CAO were not there. About 52% indicated that they would go to a government office with their issue. Where respondents indicated that they would not consult government for assistance, their reasons typically have less to do with affordability and more with their perceptions of government services. Only 16% of respondents indicated that they would not go to government because they could not afford the transport costs involved. The findings suggest that beneficiaries perceive government services as inferior, because 44% who indicated that they would not consult government gave as a reason that its services were not good enough. However, lack of knowledge of

who to consult for assistance appears also to be a reason. Thirty five percent of respondents indicated that they would not consult government because they did not know where to go.

6.

A fundamental premise underlying the cost-benefit analysis is that the state should be the first financier of any service or suite of services which generates a high social net value or a similar project evaluation related criterion, and which simultaneously enhances the extent to which the state meets its Constitutional and international obligations with respect to the realization of access to justice and various socio-economic rights.

The **Cost-Benefit Analysis** was customized to be aligned with the context of CAOs and the methodological challenges this presents. First and foremost, the valuation of benefits is complicated by the wide range of CAO services offered, and the differing nature of the service portfolio in different CAOs.

The approach taken here, then, was to use a contingent valuation willingness to pay (WTP) approach to CAO users. The main model asks after the annual contribution users would make *for the CAO in its entirety*, if not making such a contribution meant the CAO would not be available to them. We assumed, in other words, that users have a reasonable sense of what the CAO offers, and that their willingness to pay to keep it in operation would be a useable proxy for the benefits they believe it provides. A secondary model asks users how much they would be willing pay for the particular service they received on that day and generates annual benefits from this response.

Although the model is extrapolatable over longer time frames, we present results for one year; we accordingly refer to results in net value terms, rather than net present value terms, since discounting of future costs and benefits is not required. Costs are presented for two idealized CAOs, a higher funded and a lower funded one, at R 500 000 and R 250 000 per year respectively, though we assume service output remains constant in both scenarios. We assume, in other words, that for the lower funded CAO some degree of involuntary volunteerism and the like remains. Benefits are conceptualized as benefits to individual service users, positive externality community benefits, and benefits to the state as a result of a reduced demand burden on state equivalent services. Throughout, we retain conservative estimates and make further adjustments, such as recalibrating our estimate of annual CAO users, in order to provide what we regard as highly robust results. The methodological issues and cost-benefit analysis approach are outlined in detailed in the cost-benefit analysis section of this report.

Because we generate net value for two idealized CAOs with quite different cost implications, the models present a wide range of results, as expected. In the discussion of results the relevant question, then, arguably becomes what an annual CAO funding amount could

feasibly be, that would return, robustly, a strong social net value in all or most model scenarios.

We find that an annual CAO of funding of R 200 000, to 236 CAOs, as a core funding amount from the state to ensure the sustainability of the sector, would be strongly defensible on a CBA basis using the approach we have adopted.

Such an annual amount would give a positive net value for most of the models considered. Indeed, a positive net value is returned even in a low benefit scenario where state benefits are excluded. In the main model, which includes state benefits, the net value nationally of such a R 200 000 funding amount would be between R 44 904 004 and R 85 329 114.

Were such a funding amount to be provided through the fiscus, this would total R 47 200 000, annually, for 236 CAOs (at an average cost of R200 000). This is a very small amount in relation to the scope of budgetary allocations: in 2014/15, it would amount to 0.004 of total allocated expenditure of consolidated government. If 'coordination and compliance' costs are included, at a rate which implies a 10% increase in cost per CAO, the total sector budget increases to R 51 920 000. The net value remains considerable, at between R 40 188 004 and R 80 613 114. The model can also be adjusted to provide for an initial, once-off capital funding pool to be distributed to selected CAOs, in order to achieve a basic service standardization across the sector as regards material resource and other service infrastructure. A capital pool of R 40 120 000, in addition to the core funding outlays, would continue to generate high net value in most scenarios.

7.

Our recommendations accordingly are as follows:

- Serious and urgent consideration should be given to the fiscal funding of at least 236 CAOs in South Africa, for an initial annual core funding amount of at least R 200 000 per CAO. Such an amount would account for about 60% of the total annual running costs of a representative CAO and CAOs would thus still have to raise additional funds for their programs. Such a core funding amount would allow for predictable funding of key core costs but a responsibility would still fall on CAOs, NADCAO and other partners to help secure the balance of funding for CAOs.
- In the wake of such funding, oversight of CAOs would need to be located in an appropriate agency, whether new or existing, where resource governance is shared between civil society and state representatives and where distribution agencies such as SCAT or HIVOS could be used to channel and disburse funds. An existing government



agency is the FHR, for example, that manages EU funding via the Department of Justice; other options can also be considered.

- Although state oversight of CAOs is a necessary adjunct to their public funding, care needs to be taken to avoid excessively onerous reporting requirements and excessive attempts to 'standardize' CAO operations in order to facilitate their monitoring and evaluation.

- It is important that CAOs remain independent non-profit organizations, and that the state perceives them as such, rather than coming to be seen as delivery entities for state paralegal services in poorer communities. Independence does not mean independence from oversight of work funded through the fiscus, but does mean a significant degree of independence in setting



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- annual objectives and in the broader mission of the CAO. In particular to hold government directly accountable and in some instances and where warranted, to litigate.
- On the other hand, the core funding amount as we have approached it here is for paralegal and related services, and CAOs need to be accountable to use funds for such designated purposes. It is important to emphasize that CAOs, NADCAO and their partners will continue to be responsible to help secure the balance of funding needed for CAOs.
- Separate from the issue of public funding and related arrangements, too many CAOs reported unnecessary adversarial relations with some departments and municipalities. What we recommend is that government needs to see CAOs as key partners and allies in helping to realize the outcomes articulated in the National Development Plan.
- CAOs will have to intensify the current self-initiated drive towards coordination, some further degree of standardization, and will have to ensure that their own structures are adequate to the tasks that lie ahead. More specifically, CAOs will need to subscribe to agreed national standards of accountability, operation and delivery.

- CAOs, with the support of NADCAO and the Provincial Fora, need to ensure that their boards function effectively and that the right people are elected to such boards. CAOs should also consider including representatives from government on their boards, and in particular from the municipalities in which they operate, in order to build stronger partnerships.
  
- An important challenge that CAOs will have to address concerns the current absence, in almost all CAOs, of any effective system of case management, from which some evaluation of impact, and of community service demand, can be established. The establishment and maintenance of such a system should be insisted on by NADCAO, for CAOs affiliated to it, and should also constitute a condition for receiving public funds. A Central Case Management System does in fact exist but there have been serious implementation challenges and perhaps the design of the System needs to be reconsidered and rendered more context-appropriate; for example, a case management system premised on reliable internet access is not viable for many CAOs.
  
- In your recommendations you make no reference to the suggested policy debate considerations since part of the stated objective of the study refers to informing policy debate. It may be useful to make reference to particular policies that are implicated or more broadly what kinds of policy debates are needed to help ensure that CAOs are supported by the state – refer to Legal Practice Bill as well.
  
- In line with the above comment, you also make no reference to the Legal Practice Bill where there is already recognition given to CAOs but policy submissions will be needed over the next two years to cement recognition of CAOs. You also make no reference to the SETA backed certificate and diploma qualifications for paralegals since technically, you could call paralegalism a profession if backed by formal qualifications. These are two critical preconditions for national recognition ..... one from a regulatory point of view and the other with dedicated and accredited formal training. These two preconditions need to be considered in the case for funding CAOs in support of the CBA arguments.