

## *Community advice offices: Making a case for public funding*

### **Executive summary**

Community advice offices (CAOs) are small, non-profit organisations that offer free basic legal advice services and human rights information to people who are marginalised because of poverty, social circumstances and geographical location. These organisations are non-partisan and non-political in their operation. As a result of limited funding, CAOs deliver their services by utilising scarce community resources as well as relying on already overworked paralegals and volunteers. Although these services are essential for most communities, the paralegals that work at some of the CAOs continue to occupy an under-formalised and under-recognised institutional space.

This policy brief presents research findings to inform the policy debate around public funding of CAOs in South Africa. It draws from a large study conducted in mid-2014 by the HSRC, which included field visits, staff focus group discussions and key staff interviews at 19 CAOs in five provinces, as well as 186 interviews with individual CAO service users (Davids et al. 2014).

The findings of the study indicate that serious and urgent consideration should be given to the public funding of CAOs in South Africa, in the form of an annual core funding amount. Funding support should be accompanied by oversight of CAOs by an appropriate agency such

as the Foundation for Human Rights (FHR), where resource governance is shared between civil society and state representatives, and where current distribution agencies could be used to channel and disburse funds. However, state oversight must not compromise the independence of the overall management of CAOs. What is needed is for government, particularly at the local and provincial levels, to see CAOs as key partners and allies in helping to realise the objectives articulated in the Constitution and the National Development Plan (NDP).

### **Introduction**

Despite advances in access to legal services, barriers to such access persist in democratic South Africa. These barriers are strongly associated with poverty, geographic location, gender and educational levels (Dugard & Drage 2013). In terms of the Constitution, and as articulated in various regional and international policy instruments, the South African government has an obligation to ensure access to justice for all citizens. Although the South African Bill of Rights does not explicitly recognise a right of access to justice, this right is inferred. Internationally it is recognised that persons living in poverty have a right to access justice without discrimination of any kind, and a right to due process, understood as the right to be treated fairly, efficiently and effectively throughout the justice

chain. States have assumed obligations in this regard by committing themselves to respecting, protecting and fulfilling several rights such as the right to an effective remedy; the right to equality before the courts and tribunals; the right to a fair trial; the right to legal assistance; and the right to equality and equal protection of the law (see, for example, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights).

In addition, former justice minister Jeff Radebe's discussion document on the transformation of the justice system asserts that 'access to justice' is a 'fundamental value for the attainment of social transformation', and that '[a]ny discussion of transformation of the judicial system should encompass a study of the levels of access the indigent have to justice, and how accessible courts are to ordinary citizens' (DoJCD 2012: 27).

South Africa's community-based CAO sector, which dates back to the 1980s, provides first-stop or 'early action' paralegal services as well as a range of other advice and assistance functions. This sector is ailing, however, primarily as a result of financial challenges. Previous research supports the findings of the current study that CAOs are pivotal because of the roles they fulfil. Dugard and Drage (2013) indicate that CAOs are responsible for the provision of free basic legal and human rights

information to poor communities across peri-urban areas, rural villages, urban townships and informal settlements, with the purpose of forming a central hub for economic development as well as improved social welfare to these communities. Thus there are clear prima facie reasons to consider the possibility of full or partial public funding of CAOs as a means of enhancing access to justice, as well as increasing social welfare in a long-term sustainable manner. Regardless of the declarations referred to above, many communities in South Africa do not have access to legal advice (one aspect of access to justice) because of cost implications, ignorance of the existence of state-provided legal advice centres, a fear of engaging the legal aid system, and the distances that often have to be travelled to reach such centres.

Against this background, this study's main objective was to provide credible, evidence-based arguments to inform the policy debate around the public funding of CAOs in South Africa.

## Research approach

Three fundamental research components were included in this study: a desk-based review of the development of the CAO sector; a comprehensive fieldwork-based qualitative and quantitative analysis of the current role of and challenges faced by existing CAOs in South Africa; and a cost-benefit analysis which considered the economic argument in favour of core state funding for CAOs. The fieldwork took place in mid-2014 and entailed visits to 19 CAO offices in five provinces: the Eastern Cape, Free State, Gauteng, Limpopo and the Western Cape. At each CAO, key individuals were interviewed, focus group discussions were conducted with CAO staff, and service users were surveyed and interviewed. A total of 186 service beneficiary (user) interviews were conducted. In addition,

the fieldwork included focus group discussions with the CAO Provincial Forum representatives of each of the five selected provinces.

## Findings

Key challenges emerged from the *focus group discussions* with staff of the CAOs. The primary challenge identified by the overwhelming majority of focus group participants was a lack of funding. The funding picture differs across provinces, with CAOs receiving unequal, unreliable and inconsistent funding across peri-urban areas, rural villages, urban townships and informal settlements within the provinces in which the research was done. Whereas one might think that CAOs in Gauteng are better off, the research proved that this is not the case: funding challenges affecting CAOs are prevalent in all provinces researched.

The focus group participants indicated that CAOs raise their own funds from a range of sources. For instance, some offices are funded by the National Development Agency (NDA), the FHR, and the Department of Social Development, and a few receive support from Black Sash and the Social Change Assistance Trust (SCAT). Nevertheless, there is noticeable variability regarding the adequacy of funding. Many other challenges emanate from this inadequate funding, such as precarious security of premises and small or non-existent staff salaries. The focus group participants were also in agreement that CAO funding is generally inadequate to conduct operations effectively and to do medium- and longer-term planning. Additionally, CAOs that do have comparatively secure and adequate funding are sometimes obligated to use this funding for specific services tied to donor interests. For example, some government departments provide funding for CAOs to host workshops to increase public awareness, while

others provide funds to assist school and targeted feeding schemes. As a result of this non-para-legal funding, CAOs are often unable to perform their core business activities (para-legal work). Secondary challenges that were identified point to complex stakeholder relations with government, particularly at the provincial and local levels. Although CAOs face these major human and material resource constraints as well as challenging stakeholder engagements, they typically display resilience when it comes to operating under difficult circumstances.

The *service beneficiary survey* explored who CAO users are, and why and how they use CAOs.<sup>1</sup> The survey also assessed their perception of the quality of the service received and what they think about alternative service providers. The majority of the 186 respondents reported having some secondary education (38%), followed closely by those with no education or some primary education (34%). The largest proportion of respondents fell within the R1 001 – R3 000 per month income category (48%). When asked why they use the services of the CAOs, over a third of respondents (40%) highlighted assistance with legal cases or labour disputes, including divorce, harassment, payment of damages and widow inheritance. About one in ten respondents cited assistance with identity documents, birth certificates or marriage certificates as the reason for their visit, and 14% of respondents indicated that they required assistance with social problems, such as children not attending school and various poverty-related issues.

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1 It is important to note that the service beneficiary survey is not a national representative survey of all CAOs users. The results presented in this report are based on those respondents (clients) who visited the CAO on the day the survey was conducted.

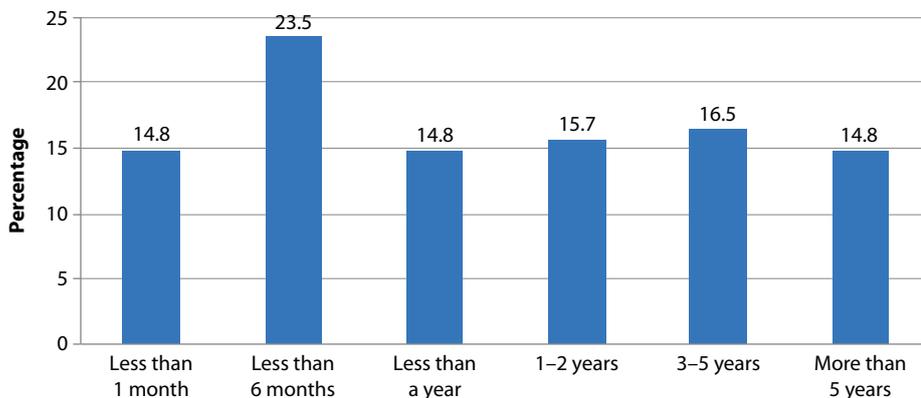
The survey revealed that the most CAO beneficiaries sought assistance from their respective CAOs for a period greater than one month, but less than six months (Figure 1). A large proportion of respondents indicated that they visit the respective CAOs in their community twice or more than twice a month. When asked about their satisfaction with CAO services in terms of 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.

The beneficiary survey included questions to ascertain respondents' knowledge of the availability of alternatives to CAOs. The survey found that about 52% of CAO users indicated that they would go to a government office with their issue if the CAO did not exist. The survey also asked those respondents who were reluctant to use government services to give reasons why they prefer alternative service providers. As shown in Figure 2, approximately 17% of respondents indicated that they would not go to government because they could not afford the transport costs involved. The findings suggest that beneficiaries perceived government services as inferior: 44% indicated that they would

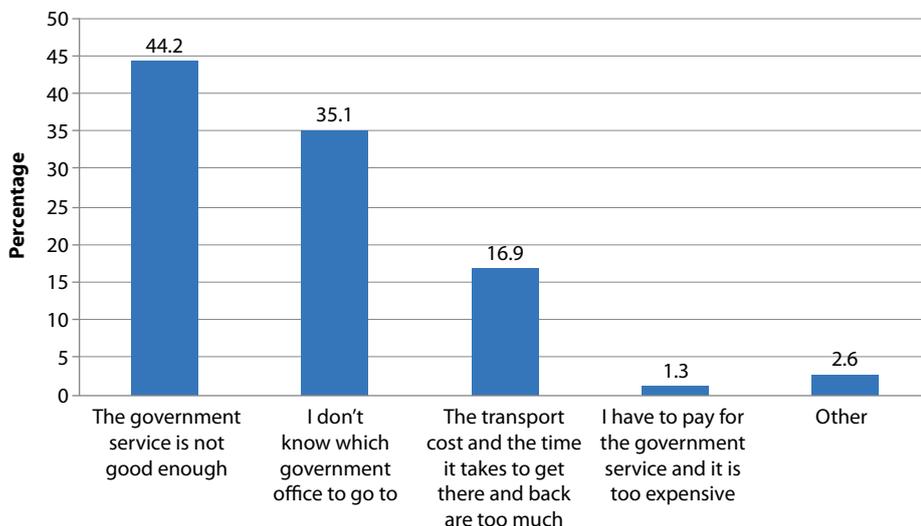
not make use of the poor services offered by government. However, 35% of beneficiaries cited lack of knowledge on who to consult for assistance as a reason for not using government services.

The cost-benefit analysis aggregated total costs and benefits of CAO operations in order to estimate the net value created by their existence.<sup>2</sup> Benefits were conceptualised as benefits to individual service users, community benefits, and benefits to the state as a result of a reduced burden of demand on equivalent services. The valuation of benefits was complicated by the wide range of CAO services offered, and the varying nature of the service portfolio in different CAOs. The approach taken was to use a contingent valuation – namely, willingness to pay (WTP) – approach to CAO users. The main model asked users for the amount, in the form of an annual contribution, they would be willing to offer if not making such a contribution meant the CAO would not be available to them. It was assumed, in other words, that users have a reasonable sense of what value 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 large proportion of the 186 users indicated that they would pay nothing (22%;  $n = 41$ ) or less than R50 (21%;  $n = 38$ ). About 30% ( $n = 55$ ) indicated that they will pay between R50 and R100, while 9% ( $n = 17$ ) of the respondents were prepared to pay between R101 and R150. Only 18% ( $n = 33$ ) of the users indicated that they would pay more than R150. A second model asked users how much they would be willing to pay for

**Figure 1:** Length of time that people use a CAO



**Figure 2:** Reasons for not using a government service



<sup>2</sup> The annual costs of the 19 CAOs selected for study varied significantly, depending on the type of services provided, the number of staff, the CAO's location, whether the CAO receives financial support, etc. Nevertheless, based on available information the estimated average annual cost of R200 000 is strongly defensible on a cost-benefit analysis basis.

the particular service they received on that day and generated annual benefit valuations from these responses.

Operational costs were estimated for two CAOs, a higher-funded and a lower-funded one (at R500 000 and R250 000 per year respectively), for the same level of service provision. It was assumed, in other words, that for the lower-funded CAO some degree of volunteerism and the like would remain. An annual core funding amount of R200 000 to each of 236 CAOs<sup>3</sup> was found to be strongly defensible on a cost-benefit basis, and that higher core funding amounts would in all likelihood also return strong positive net values. The study results suggest that, nationally, the net value of a R200 000 funding amount per CAO would be between R44 904 004 and R85 329 114.

If such a funding amount were to be provided through the fiscus to 236 CAOs, this would total R47 200 000 annually, a small amount in relation to the scope of budgetary allocations. (In 2014/15, for example, this would have amounted to 0.004% of the total allocated expenditure.) If 'coordination and compliance' costs were included, at a rate which implies a 10% increase in cost per CAO, the total sector budget increases to R51 920 000. The net value remains considerable, at between R40 188 004 and R80 613 114. The model was also adjusted to provide for an initial, once-off capital funding pool to be distributed to selected CAOs in order to achieve basic service standardisation across the sector as regards material resources and other infrastructure. A capital pool of R40 120 000, in addition to the core funding outlays, would continue to generate high net value in most scenarios.

## Enhancing the value of CAOs

Overall, the findings of this study showed that CAOs play a key role in providing free basic legal and human rights information to poor communities across urban areas, rural villages, urban townships and informal settlements. These services are delivered with limited funding, which generates a range of problems such as the sustainability of the sector, including the inability to retain staff. Other challenges include the absence of formal regulation, service standardisation, adequate acknowledgement and recognition, and, as a result, uneven service provision in some instances. Despite these challenges, the results from the study showed that, with some assistance, CAOs can form a central hub for economic development as well as improved social welfare to the communities they serve.

The South African government would therefore do well to support CAOs because the services they provide go beyond legal and paralegal advice. Furthermore, many CAOs are more accessible than government offices. The accessibility of CAOs is crucial as they provide services related to social issues, legal issues and in some instances financial issues affecting communities, which is usually the responsibility of government. CAOs also serve as a source of employment and skills development to young community members in their areas. Unfortunately, the value of CAOs, especially in impoverished communities across the country, is not always acknowledged (NADCAO 2007).

It is against this background that the National Alliance for the Development of Community Advice Offices (NADCAO) has rebuilt the sector's relations with the Department of Justice and Constitutional Development and with Legal Aid South Africa, thus facilitating the sector's re-engagement with

the legislative process. Furthermore, NADCAO has become the central advice office sector partner, proving pivotal to both NGOs and donors and illustrating how NGOs can be brought together to share resources that benefit the entire sector. In 2014, NADCAO launched the Association of Community Advice Offices of South Africa (ACAOSA), a final component of the Sector Development Model aimed at unifying and institutionalising CAOs. Through these developments it is envisaged that CAOs will further improve upon the range of services they deliver to communities. Policy around CAOs would therefore provide them with security, a clear structure, and recognition as non-governmental entities in a formalised sector that has checks and balances on how operations are done. This would be without direct interference from government as CAOs still need to remain independent entities.

## Policy recommendations

- 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 thus CAOs would still have to raise additional funds for their programmes. 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 CAO funding.
- 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 would be shared between civil society and state representatives, and where distribution agencies such as SCAT or the Humanist Institute for Cooperation (HIVOS) could be used

<sup>3</sup> The total of 236 CAOs was taken from the NADCAO database when the fieldwork was implemented in May 2014.

to channel and disburse funds. An example of an existing government agency is the FHR, which manages European Union 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 onerous reporting requirements and excessive attempts to 'standardise' CAO operations in order to facilitate their monitoring and evaluation. It is important that CAOs remain independent non-profit organisations, and that the state perceives them as such, rather than their 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 a significant degree of freedom in setting annual objectives and in the broader mission of the CAO. On the other hand, CAOs need to be accountable for using funds for designated paralegal purposes.
- Many CAOs reported unnecessary adversarial relations with government departments and municipalities. It is recommended that government considers CAOs as key partners and allies in helping to realise the outcomes articulated in the Constitution and the NDP.
- CAOs must intensify the current self-initiated drive towards coordination and some further degree of standardisation, 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, need to ensure that their boards function effectively and that the right people are elected to such boards. To build stronger partnerships,

CAOs should also consider including on their boards representatives from government – in particular, government representatives from the municipalities in which they operate.

- CAOs require an 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. It appears that 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.

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