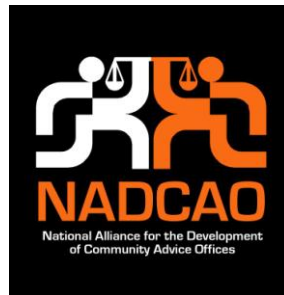


NATIONAL ALLIANCE FOR THE DEVELOPMENT OF COMMUNITY ADVICE OFFICES (NADCAO)



RESEARCH ON SUSTAINABILITY OPTIONS FOR THE ADVICE OFFICE SECTOR IN KWAZULU-NATAL

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Executive Summary and Key Findings

The National Alliance for the Development of Community Advice Offices (NADCAO) was established in 2005 by a range of stakeholders that shared a common interest in, and commitment to, ensuring the sector's sustainability. Since then, NADCAO has undertaken extensive consultations with community-based advice offices in eight provinces and had numerous debates and discussions around the unprecedented challenges facing the sector. The key objectives of NADCAO is to continue to mobilise resources for the sector; supporting efforts to unify the sector; accentuating the sector's voice (advocacy); building up a national knowledge repository and facilitating capacity building for advice offices and paralegals.

NADCAO commissioned a research study on sustainability options for the advice offices operating in the province of KwaZulu Natal. The purpose of this study is to:

- Conduct research on possible sustainability model(s) and/or options for the province and to produce a critical paper on sustainability strategies for the sector in the province;
- Identify and explore possible contracting partners for the sector in the Province (including corporate and public sector departments);
- Develop two brief proposals in response to potential contractors that show the most interest in using the resources of the sector in the province.

Key Findings:

- Liberal legislation exists for advice offices to exist without state interference. However, the Legal Practise Bill of 2002 has not been enacted and this has been a major blow to the sustainability of the advice offices. On the other hand, there has been a positive development with the drafting of the Legal Services Charter, which specifically recognises paralegals and advice offices. The Charter has been drafted in a manner that presupposes the enactment of the Legal Practise Bill. NADCAO and the paralegal and advice office sectors need to monitor these developments closely and assert their influence during the finalisation of the drafting phases of the Charter. In addition, renewed energy needs to be injected into lobbying around the Legal Practise Bill. The Department of Justice's Medium Term Strategic Framework 2005-2208 (MTSF 2005-2008) also provides a window of opportunity for collaboration with government in the implementation of this Framework. The above efforts will only be enhanced through the urgent establishment of advice office and paralegal national representative bodies. NADCAO should act as a facilitator of both processes while keeping its finger on the pulse of the above developments. The Charter, Legal Practise Bill and MTSF 2005-2008) provide opportunities for greater sustainability for the advice sector;
- Advice offices should be transparently governed and publicly accountable, capably managed, and should exhibit essential organisational skills. Unfortunately, no substantive information exists to determine this. However, one factor that could contribute positively to sustainability is the registration of all advice offices as legal entities;
- Human resources continue to be a major challenge and will only be overcome with regular incoming funds. However a culture of volunteerism must be encouraged and training resources must be made available to them from institutions such as the Chapter 9 institutions (bodies established by the Constitution to promote democracy).

An increase in human resources will contribute positively to sustainability by virtue of greater office capacity;

- While foreign donor funds dwindle away, local philanthropic, corporate and government support must be pursued vigorously. There is evidence that shows that the former two contribute far more to social investment than foreign donors. However, advice offices would need to package their missions around deepening and strengthening participatory democracy. In so far as government is concerned, the MTSF 2005-2008 also provides a window of opportunity for the advice office to participate in;
- NADCAO should convene a national meeting of relevant donors, philanthropists, corporates and government officials to discuss appropriate support to the advice office and paralegal sectors;
- Communities could contribute a nominal amount each month to the running costs of the advice offices, assuming that the advice office is a registered legal entity and has a proper governance structure and trust accounts with a banking institution; the advice offices could also diversify its services and act as a facilitator between corporates and local government in the implementation of integrated development plans and local economic development. The Black Economic Empowerment Act also provides opportunity for development which local communities in conjunction with the advice offices could take advantage of. The example of Ditikeni (<http://www.ditikeni.co.za/>) a consortium of NGOs is an apt example;
- As NADCAO is a catalyst for change, it could be instrumental in assisting in the setting-up of national representative bodies for the advice offices. This is a matter of urgency, in light of the development around the Legal Services Charter and the resuscitation of the Legal Practise Bill. The impact this will have on sustainability has already been alluded to;
- While it is clear that 167 advice offices managed 120,500 cases in 2005, there is no evidence on the quality of service/advice given, the professionalism of the paralegals, what matters were resolved successfully (and what monies were recovered), what were not, and why. If an audit of all advice offices is to be undertaken by NADCAO, this must include soliciting this information as well as an evaluation with stakeholders, particularly clients;
- While there is evidence that there is a great need for capacity building, the exact extent of this is unknown. An audit or Training and Development Needs Analysis would shed more light on this. What is clear though is that without proper training, without proper governance and without proper regulation, the quality of services rendered cannot be monitored. If the quality of service is bad, this will obviously reduce the levels of sustainability. The Chapter 9 institutions, Legal Aid Board and relevant NGOs should be approached to provide training. In many instances, they will have funding for this, so the advice offices will not have to pay for training. The advice offices should also take advantage of funds available in the Skills Development Fund and apply to register their paralegals for the Safety and Security Sector Education and Training Authority's (SASSETA) National Diploma: Paralegal Studies;
- It was found that there is no dedicated Intermediary Service Organisation (ISO) to the advice offices, but that the Chapter 9 institutions, the Legal Aid Board, some government departments and NGOs do provide capacity building and other services. It is suggested here, that NADCAO is currently playing the role of ISO to the advice offices and of course the challenge is that while the advice office and paralegal sectors start organizing themselves into coherent and representative provincial and national bodies, NADCAO should strengthen and entrench itself as an ISO to advice offices and perhaps paralegals. This dedicated support will bring greater sustainability to both sectors as well as NADCAO;

- During this study, every single person interviewed expressed their concern over the public image of paralegals. There is a misperception that **all** paralegals do not have sufficient training and that they are not professional. This is not true for many paralegals and is a dangerous stereotype. Unfortunately, the stereotype is perpetuated through the misconduct and lack of training and professionalism of some paralegals; the lack of their regulation and by the lack of understanding of the advice offices and paralegals and a lack of a proper appreciation of the role they play in their communities. Therefore a media strategy needs to be put in place. Of course, this in itself cannot change perceptions; what also needs to happen is the establishment of the representative bodies, proper regulation, accountable and transparent governance, trained paralegals who display professionalism and advice offices which can show success achieved effectively and efficiently.

Background

Community based advice offices provide services that contribute to social cohesion, make tangible the concept of human rights and facilitate access to government services intended for the poor and marginalized. Paralegals working within these offices provide the first tier of support and assistance to many who do not have the means to access other forms of legal representation.

Despite the overwhelming evidence of the value of advice offices, the sector faces unprecedented challenges that threaten its sustainability. These challenges include declining funding, a general lack of recognition by government and key stakeholders of the value that can be offered by the sector, and the lack of a unified voice to speak out on issues that affect the sector. The key imperative is access to social justice by the poor in South Africa, and in this sense, the advice office sector remains the key advocate and service provider for the very poor and marginalised in the country. All efforts are needed to sustain and grow the sector so that the majority of poor people enjoy access to social justice.

In 2005, a number of concerned and affected stakeholders, including four donor organisations, initiated the establishment of the NADCAO, to attempt to address the challenges facing the community-based advice office sector. The primary intent of NADCAO is to sustain and enhance access to social justice by the poor in South Africa by helping to build the advice office sector in the country.

The networks listed below form part of NADCAO:

1. Association of University Legal Aid Institutions (AULAI) Trust
2. Black Sash Trust
3. Community, Law and Rural Development Centre (CLRDC)
4. Ithembalabantu Community Resource Centre
5. Karoo Centre for Human Rights (KCHR)
6. Social Change Assistance Trust (SCAT)
7. Upper Karoo Development Agency (UKADA)

The donors who are supporting this initiative and the sector are listed below. They also have representatives on the Alliance committed to and bound by the same imperatives noted above:

- Charles Stewart Mott Foundation
- Foundation for Human Rights (FHR)
- International Commission of Jurists – Sweden (ICJ-Sweden)

- Netherlands Institute for Southern Africa (NiZA)

Methodology

Four phases were undertaken:

- Desk phase: conducting research on sustainability possibilities, strategies and imperatives for the sector in the province of KwaZulu-Natal; identifying and exploring possible contracting partners for the sector in the province
- Field phase: making contact/interview of stakeholders/potential stakeholders
- Synthesis phase: preparation of the critical paper on sustainability models and/or options for the sector in the province and the development of two brief proposals in response to potential contractors that show the most interest in using the resources of the sector in the province. The latter was conditioned on whether in fact this interest can be garnered in the short space of this consultancy
- Presentation phase: presentation of research findings, possible sustainability model(s) and/or options for the province to a stakeholder meeting in 1 November 2007

As will be seen in this report, two proposals were not delivered for submission to the identified target organisations that have the potential to fund / contract the sector. This was due to a lack of information on exactly what the funding and resource needs are of the advice office sector. Despite this lack of empirical information and despite not drafting any proposals as envisaged in the methodology, funds have been raised and resources mobilised for the advice office sector, and there have been numerous watershed developments for the sector in this regard.

Part B: Possibilities for Sustainability, Strategies and Imperatives for the Advice Office Sector in KwaZulu Natal

The 2006 NGO Sustainability Index¹ has been very useful in carrying out research on sustainability options for the advice office sector in KwaZulu Natal. This is based on the premise that the Non-Governmental Organisation (NGO) Index can be applied to the advice offices, given that the advice offices are popularly regarded as either NGOs or Community-Based Organisations (CBOs). This Index, looks at seven different dimensions and this part of the report is based on an analysis of these dimensions vis-à-vis the advice offices. The seven dimensions are:

- Legal environment
- Organisational capacity
- Financial viability
- Advocacy
- Service provision
- NGO infrastructure
- Public image

¹ The U.S. Agency for International Development (USAID) released the 10th edition of the NGO Sustainability Index, a key analytical tool that measures the progress of non-governmental organizations (NGOs) in the Europe and Eurasia (E&E) region. See http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2006/

Legal Environment

a. Types of organisations²

The legal framework for not-for-profit, NGOs in South Africa consists of four primary tiers. At the first tier, statutory and common law recognizes the following NGO legal forms: Voluntary Associations; Trusts; and Section 21 Companies limited by guarantee (sometimes called “associations incorporated not for gain”).

A second tier of legislation allows any of these organisational forms to apply for the status of “Non-Profit Organisation.” Among other requirements, a Non-Profit Organisation cannot distribute profits, and it must meet certain governance criteria.

A third legislative tier enables a Non-Profit Organisation to apply for the status of “Public Benefit Organisation.” Among other requirements, the organisation's sole purpose must be to undertake one or more public benefit activities, carried out in a non-profit manner and with an altruistic or philanthropic intent.

Public Benefit Organisations are restricted in their ability to engage in political activities but not in lobbying. They are entitled to a broad range of tax benefits, including income tax exemptions and exemptions from the donations tax.

Finally, a fourth legislative tier allows Public Benefit Organisations to apply for the right to receive tax-deductible donations.

Other not-for-profit legal forms include trade unions, employers' organisations, cooperatives, political parties, and so-called Friendly Societies established for the benefit of their members.

b. Tax laws³

The Income Tax Act provides two major benefits to the not-for-profit sector: tax exemption, for organisations that qualify as Public Benefit Organisations; and donor deductibility, for contributions to those Public Benefit Organisations that carry out certain specified Public Benefit Activities (“Public Benefit Organisations with Donor-Deductible Status”). Public Benefit Organisations are also entitled to benefits with regard to donations tax, estate duty, transfer duty, and the skills development levy. Finally, certain organisations are eligible for VAT preferences. South Africa and the United States have entered into a double taxation treaty.

c. Does the legal and regulatory environment enhance the sustainability of advice offices?

In the main, the legal and regulatory environment does support the needs of advice offices. According to the Index already referred to, it should ‘facilitate new entrants, help prevent governmental interference, and give NGOs the necessary legal basis to engage in appropriate fundraising activities and legitimate income-producing ventures. Factors shaping the legal environment include the ease of registration; legal rights and conditions regulating NGOs; and the degree to which laws and regulations regarding taxation,

² See <http://www.usig.org/countryinfo/southafrica.asp>

³ See <http://www.usig.org/countryinfo/southafrica.asp>

procurement, access to information and other issues benefit or deter NGOs' effectiveness and viability.

The extent to which government officials, NGO representatives, and private lawyers have the legal knowledge and experience to work within and improve the legal and regulatory environment for NGOs'.⁴ What is lacking though is professional recognition and regulation. A major factor which has adversely affected paralegals and therefore the advice offices has been a perceived lack of political will to enact the Legal Practise Bill of 2002.

The passage of this Bill would have brought professional recognition of the paralegals through their integration into the formal justice sector.

On the other hand, the Legal Services Charter is nearing completion and the second draft is complete and comments will be invited by the public shortly. This will provide a window of opportunity to make sure that the gains already made in the Charter are not diluted, but in fact strengthened.

In brief, the Charter as currently formulated defines a paralegal as a person who has knowledge and understanding of the law, its procedures and its social context acquired through training, education, work experience and/or a national registered qualification in paralegal practice. The question of self-regulation of paralegals is not considered in the Charter and this is an indication that it may well be covered by the Legal Practise Bill, which must now be enacted, in order to give effect to the Charter. Paralegal services mean the provision of primary legal services to the general public, especially the poor, marginalised, indigent individuals, groups or community. It is unclear whether this definition is limited to paralegals as defined only. For example could it include a paralegal union?

The Charter recognizes that the paralegal practitioners, who play a significant role in expanding access to justice, are insufficiently recognised and regulated. They are identified as stakeholders in the Charter. The Charter attempts to provide access to primary legal services, especially in rural, peri-urban and township areas. It will also develop common ethical standards for all practitioners, including paralegals.

A National Regulatory Body will be established by legislation for all practitioners. The members thereof will be appointed by the Minister for Justice, after consultation with the Chief Justice and the President of the Supreme Court of Appeal, comprising persons nominated by the professional organisations, representative of legal and paralegal practitioners and persons who represent the public interest. The Council shall, among others, have the following powers and functions:

- Prescribe qualifications for admission to legal and paralegal practice, subject to national legislation;
- Maintain a roll of registered legal and paralegal practitioners;
- Prescribe and levy annual fees for licence to practice;
- Deal with complaints of malpractice through regional complaints tribunals and the office of a national ombudsman.

⁴ The U.S. Agency for International Development (USAID) released the 10th edition of the NGO Sustainability Index, a key analytical tool that measures the progress of non-governmental organizations (NGOs) in the Europe and Eurasia (E&E) region. See http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2006/

Interestingly, the Charter gives legal academia the responsibility to provide paralegal training, where appropriate.

The representation on the Council shall include one paralegal appointed by their regulatory body. The regulatory body will probably be legislated through the Legal Practise Bill and paralegals should therefore organise themselves for this.

Recommendations

What has been accomplished? Generally speaking, there is liberal legislation in place for advice offices to exist and perform their functions without hindrance from outside factors. However, their sustainability has been affected by the non-passage of the Legal Practise Bill. This remains a problem. However, the Legal Services Charter once enacted, will bring recognition to paralegals. The Charter has been written in a manner that presupposes that the Legal Practise Bill will be enacted. The Medium Term Strategic Framework (2005-2008) of the Department of Justice is based on access to justice for all. It provides a unique opportunity for the advice offices to formally participate in its implementation. These developments are major factors that could now positively impact on paralegals and advice offices in terms of sustainability.

What remains a problem? The problem is that with the falling away of the National Community-Based Paralegal Association, community based paralegals do not have a strong and national representative body that could articulate their needs and aspirations. At the same time, there is also no national representative body of advice offices. New impetus needs to be brought to revive the Legal Practise Bill, in the wake of the Charter. There also needs to be a more defined dialogue with the Department of Justice on their Medium Term Strategic Framework (2005-2008).

Do local actors recognise the nature of outstanding challenges? NADCAO has an acute sense of this, but without representative bodies for the advice offices and paralegals, it is difficult to gain a sense of whether there has been a proper appreciation of this on the ground. Apart from NADCAO, there has not been a formal response from the advice and paralegal sector. It is suggested that NADCAO, although having the interest of advice offices as its focus, should act as a catalyst for the establishment of a national association of paralegals and advice offices. At minimum, NADCAO must actively galvanize both sectors to meet these challenges and make representation at calls for comments on the Charter and make representations at public hearings, continue their lobbying on the Legal Practise Bill and formalize a relationship with the Department of Justice on the Medium Term Strategic Framework (2005-2008). NADCAO should develop a strategy on exactly how it will grapple with the above issues.

Organisational Capacity

a. Organisational form

‘A sustainable advice office sector will contain a ‘critical mass of advice offices that are transparently governed and publicly accountable, capably managed, and that exhibit essential organisational skills.’⁵ There are no available statistics that relate to the legal

⁵ The U.S. Agency for International Development (USAID) released the 10th edition of the NGO Sustainability Index, a key analytical tool that measures the progress of non-governmental organizations (NGOs) in the Europe and Eurasia (E&E) region. See http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2006/

form of individual advice offices in KwaZulu Natal. There is uncertainty about their governance structures. However, be that as it may, there is no question about the need for legal compliance in terms of organisational form and governance structures. Many advice offices in KwaZulu Natal are associated or affiliated with the Community Law and Rural Development Centre, Ithembalabantu or Black Sash. While these umbrella institutions have clear legal form and governance structures, the advice office affiliates don't all appear to. In some instances, this is an indication of the dependence that has been created between the umbrella body and its affiliates.

It is recommended that all advice offices decide on their legal form and that the necessary arrangements be done for registration. The governance structures should be made up of men and women community representatives, local businesses, local government, local attorneys, Justice Centre representatives and a representative from any institution the advice office is affiliated to. The legal document regulating the conduct of the advice office (usually a constitution, articles of association or a trust deed) need not be a mirror image of the umbrella body, but must be characterised by a sense of independence, social justice and a mechanism for creative sustainable action, without being hampered by external relations, such as membership to the umbrella body. If anything this latter relationship should enhance development and sustainability. In developing this legal document, the following questions should be asked:

- Should advice offices actively seek to build constituencies for their initiatives?
- Do advice offices have a clearly defined mission to which they adhere?
- Do most advice offices incorporate strategic planning techniques in their decision making process?
- Is there a clearly defined management structure within advice offices, including a recognised division of responsibilities between the Board of Directors and staff members?
- Is there a permanent, paid staff?
- Are potential volunteers sufficiently recruited and engaged?
- Do advice office resources generally allow for modernised basic office equipment?⁶

b. Human resources

Looking at human resources more closely, generally speaking, there are insufficient people working in the advice offices, given the expanse and the scope of the work involved. Two reports have been looked at, in this regard. The first report⁷ looks at advice offices funded by the Foundation for Human Rights (FHR). It indicates that on a national basis 71% of people working in the FHR advice offices are waged and that 29% are volunteers. The mean number of people working in each office is reported as 6.6. In another report⁸ this figure for KwaZulu Natal is 2.5.

'During the fieldwork, many advice offices maintained that volunteers are a crucial factor in the sustainability of the offices. However, they also remarked that in order to attract volunteers who want to provide a service and acquire skills, an advice office has to

⁶ The U.S. Agency for International Development (USAID) released the 10th edition of the NGO Sustainability Index, a key analytical tool that measures the progress of non-governmental organizations (NGOs) in the Europe and Eurasia (E&E) region. See http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2006/

⁷ Fioramonti, L; The Foundation for Human Rights and Advice Offices: Sustainability and Future Perspectives; undated

⁸ NADCAO; The Value of Community Advice Offices in a Contemporary South Africa; 2007

develop training capacity that most offices admittedly lack. In practice, the number of potential volunteers would increase exponentially if the advice offices could manage to offer specific and professionalized training to community dwellers, mainly the youth, who seek jobs but have not received the necessary education and professional training. The data also confirms that most operators in the advice offices are women. This element is even more poignant when interpreted in light of the fact that several advice offices are almost entirely staffed by women.⁹

Recommendations

NADCAO should encourage all advice offices associated with it to register as a legal entity and to establish a proper governance structure. This should be an across the board suggestion, irrespective of affiliation to umbrella bodies. Given the number of advice offices that would need to undergo this transformation, it is recommended that a group of funders be approached to fund this transformative activity. It's worth looking to see later how a legal structure will enhance sustainability and advocacy.

Human resources will always be a major challenge, at least until there is a regular source of funds and resources allocated to advice offices. A culture of volunteerism should be encouraged but it should be noted that even volunteers expect at minimum, some capacity building training. Training resources must be sourced from the Chapter 9 institutions, Legal Aid Board and other relevant NGOs. As they have, in most instances, their own budgets for capacity building, there is a distinct possibility that advice offices will not have to pay for these training resources.

Financial Viability

A critical mass of advice offices must be financially viable, and the economy must be robust enough to support advice office self-financing efforts and generate philanthropic donations from local sources. For many advice offices, financial viability may be equally dependent upon the availability of and their ability to compete for international donor support funds. Factors influencing the financial viability of the advice offices include the state of the economy, the extent to which philanthropy and volunteerism are being nurtured in the local communities, as well as the extent to which government procurement and commercial revenue raising opportunities are being developed. The sophistication and prevalence of fundraising and strong financial management skills are also considered.¹⁰

Questions asked under this dimension include: Do advice offices raise a significant percentage of their funding from local sources? Are advice offices able to draw upon a core of volunteer and non-monetary support from their communities? Do advice offices typically have multiple/diverse sources of funding? Are there sound financial management systems in place? Have advice offices cultivated a loyal core of financial supporters? Do revenues from services, products, or rent from assets supplement the income of advice offices? Do government and/or local business contract with advice offices for services?

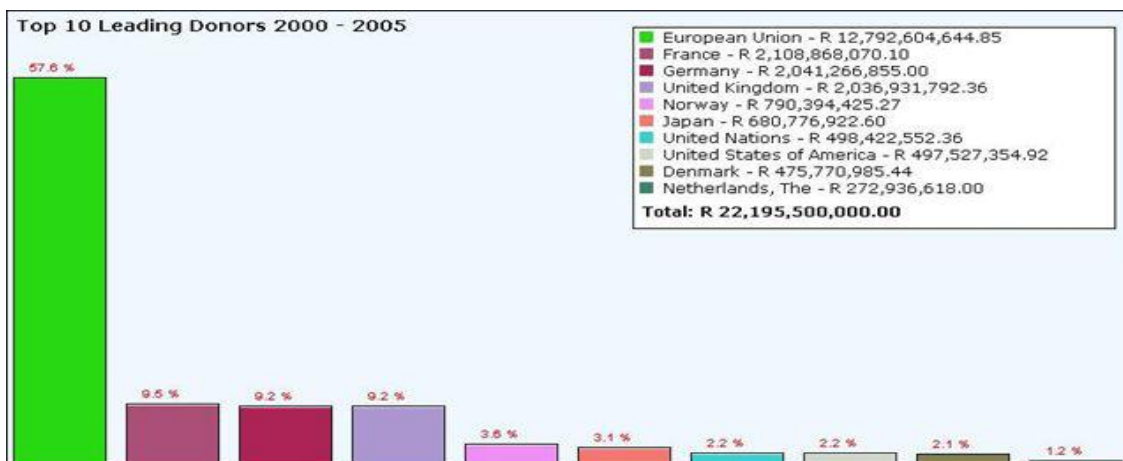
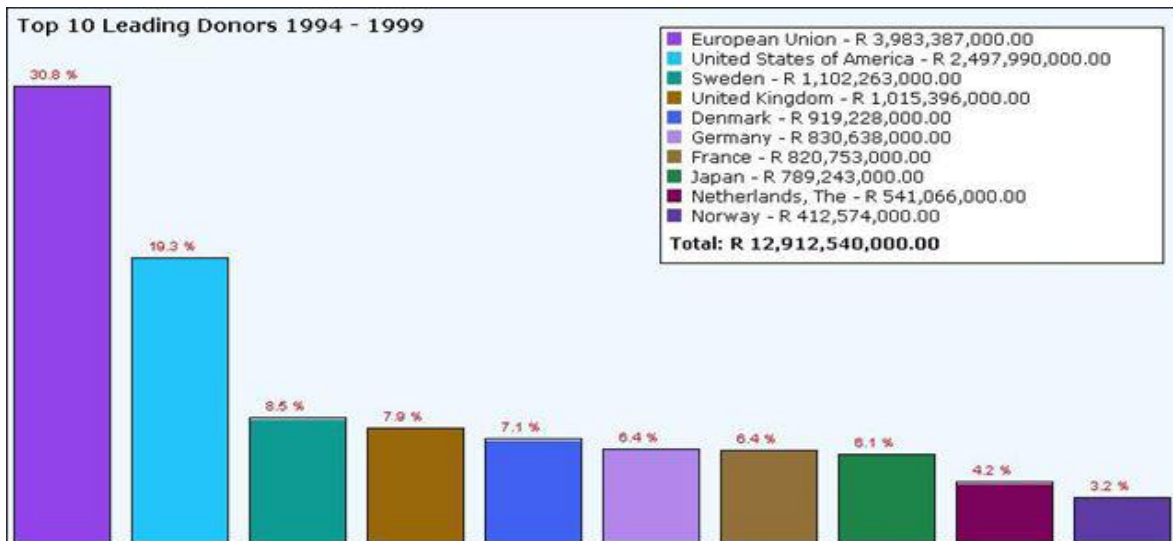
⁹ Fioramonti, L; The Foundation for Human Rights and Advice Offices: Sustainability and Future Perspectives; undated

¹⁰ Ibid

a. Official Development Assistance (ODA)

In 2004, net official development assistance (ODA) to South Africa was USD617 million, up from USD505 million in 2002. As a percentage of gross national income (GNI), net ODA in 2004 amounted to only 0.3%, a figure which has been falling as GNI has increased faster than aid. South Africa is one of the least aid-dependent countries. Nevertheless, aid effectiveness remains an important issue and South Africa has endorsed the Paris Declaration.¹¹ One can immediately see that the proportion of aid is very small, and this begs the question “surely then local funds could and should be sourced?”

The tables below indicate ODA to South Africa from 1994-2005 and includes only government-to-government funds.



The EU has increased its funding since from R3.9bn in the period 1994-1999 to R12.7bn in the period 2000-2005. In addition, for the period 2000-2005, the EU contributed approximately 57% of all ODA. South Africa is clearly not dependent on aid with ODA

¹¹ OECD; Aid Effectiveness: 2006 Survey on the Monitoring the Paris Declaration; 2006; p.345

constituting 1.2% of the budget in 2004. However in the period 2002/2003 12% of ODA went to Justice and Constitutional Development. This was the third highest allocation, with Water Affairs receiving the most at 22%.

According to a report¹², which is summarized below, prior to 1994, ODA donors funded South African non-governmental organisations directly, or supported exiles and anti-apartheid organisations outside of the country rather than deal with the apartheid government. After 1994, the democratically elected government became the chief recipient of ODA, although major donors (e.g. USAID, the EU, DFID, and GTZ) still direct some funding directly to civil society. The allocation of ODA to South Africa shows three distinct trends since 1994: high levels and a steady year-on-year increase in the years 1994-1997, as South Africa's first democratic government reached bilateral and multilateral agreements with most donors; a downward movement from 1997-1999, which the International Development Corporation (IDC) attributed to the initial high flows having achieved their objective of concretizing support to the new government; and then a dramatic recovery and increase in aid flows from 2000.

Another issue to consider in looking at the trends is the capacity of the government to manage ODA. Donors shifted their support from the non-profit sector to the state, or began funding the state sector with the demise of apartheid because this seemed both the logical and ideologically correct way to support large scale development. Donors assumed that the new government had the knowledge, the infrastructure and the personnel to manage, monitor and report on this channel of funding. However, lack of capacity, coupled with the failure of donors to report adequately, accurately and timeously on their disbursements against commitments, and the disbursement problems of the National Development Agency (NDA), made some donors rethink the policy and revert to channeling some aid through NGOs.

A change of focus in terms of giving is noticeable through the period 1998 to 2004, which marked a shift from transition to economic and political stability. New development cooperation strategies emerged reflecting emergent donor priorities: more funding was earmarked for HIV/AIDS and there was a slight shift from 'aid' to 'trade'.

From 1994 to 1999, many of the smaller and medium-sized donors planned their aid on a year-to-year basis. Since 2000, many official donors have changed their cooperation strategies and prefer to contribute a fixed amount for a fixed period of time. New agreements have emerged as South Africa moves towards 'graduating' from an aid recipient to a trading 'partner'. However, many donors remain committed to using ODA to help redress the apartheid legacy of poverty and inequality, as well as developing trade links with South Africa. South Africa is also targeted as an ODA recipient as the United Nations Development Programme (UNDP) considers it a high priority country in terms of achieving the Millennium Development Goals.

Within the global trends and the overall patterns of ODA to South Africa, donor behaviour of course varies. An increase of ODA from Norway, the European Union and Japan is evident (albeit with very different agendas), while other major donors have been reducing their aid commitments.

¹² Ewing, D and Guliwe, T; Official Development Assistance & Private Foreign Giving: The State of Social Giving in South Africa Report Series: Research report #5 & 6: Externally Funded Resources; page 25

According to Ewing and Guliwe¹³ the use of different M&E systems and reporting formats, and the inflexibility of standard reporting frameworks have long been identified as problematic. M&E tends to be highly quantitative, focused on completion of projects and proper financial accounting, but with less attention paid to qualitative outcomes. This is particularly problematic in terms of assessing impact on poverty or development. They also state that Some of South Africa's bilateral aid relations that are on the brink of expiry may not be renewed.

The central argument for a decrease of donor funding is that South Africa's economy and its democracy has now been stabilised. Canada, for example, has stressed its intention to fund other countries as South Africa steadily 'graduates' from being a recipient Japan also talks of South Africa having graduated from being a donor-funded recipient. Given the growing income disparities in South Africa, the millions of people living in absolute and chronic poverty, and the proportion of the population that is excluded from the social and political economy of the country and unable to access their basic rights, the notion that the country 'no longer needs aid' might simply provide a convenient cover for engaging in business relations that benefit the former donor and perpetuate economic relations that impoverish large sections of the population. Some donors expect to continue providing ODA for poverty alleviation, democratisation and human rights, and several have highlighted the need to fund the fight against HIV/AIDS¹⁴

b. Foreign Private Donors

According to Ewing, the three main themes emerging from the analysis of the international funding climate and the role of foreign private giving in South Africa are:

A willingness to continue supporting poverty alleviation and development programmes, to strengthen democracy and reduce inequality

A concern that South Africa should be able to mobilise local (public, corporate and private) resources for both national and regional/continental development

Recognition of the importance of consolidating and disseminating information to grant seekers and grant makers about funding flows – both to improve access to funding and to improve coherence

While aid flows from foreign private agencies are much lower than official flows, one of the major differences is that ODA constitutes a minute proportion of state spending, while private foreign funding is the mainstay of many non-profit organisations. Given that few NGOs have been able to tap into local funds, whether corporate or private, to improve their sustainability, until and unless there is an effective and efficient mechanism for channeling donor funding to the non-profit sector through a restructured NDA or another vehicle, this dependency (and unsustainability) is likely to continue.

The demise of Interfund is sobering in this regard: if a major grant maker with a long history and relatively broad funding base was unable to retain external support or generate sufficient local support to replace foreign funding, how will NGOs and CBOs fare?

¹³ Ewing, D and Guliwe, T; Official Development Assistance & Private Foreign Giving: The State of Social Giving in South Africa Report Series: Research report #5 & 6: Externally Funded Resources

¹⁴ Ibid; page 25

There is still significant international private funding available to support development and poverty alleviation in South Africa. Most of the major donors expect to continue supporting South Africa in the medium term. The major challenge is to bridge the gap between the tens of thousands of unsupported CBOs delivering services at community and household level and the plethora of foreign agencies wanting to target funds so that they will make a difference at that local level but in a way that can be properly monitored and contribute to broader development goals.

Donors are clearly applying their minds to this dilemma. Mott has looked at how it can support mobilisation of local resources so that its US\$5 million a year will have lasting impact. It has highlighted the possible role of mechanisms for leveraging local funds, such as savings clubs, community foundations, tax incentives for giving, women's funds and workplace giving. One of its beneficiaries, the Wheat Trust in Cape Town, is developing a local funding base.

In general, the most popular sectors for support have been:

- Education
- Development
- Technology/communications
- Capacity-building
- Environment
- AIDS
- Health
- Culture
- Justice, women, children, peace/conflict resolution, poverty
- Civil society

Please see below for funding figures.

Table 1 - Funding to South Africa by the largest foreign private donors for 2003/4

Donor	Amount given in rands 2003/4
Kaiser Family Foundation	R195 million ²⁰
Atlantic Philanthropies	R124.5 million
Gates Foundation	R114 million ²¹
Ford Foundation	R78 million
Open Society Foundation for South Africa	R47.7 million
Kellogg Foundation	R21.4 million
Mott Foundation	R17.97 million ²²
Bernard van Leer Foundation	R7.22 million
Joseph Rowntree Charitable Trust	R3.5 million
Rockefeller	R3.4 million
Carnegie	R2.25 million
Total	R614.94 million

c. Individual Giving

According to an unpublished report by HSRC¹⁵ over half of respondents (54%) gave money and a third (31%) gave goods to charities or other causes, while slightly less than a fifth (17%) volunteered time. In addition to giving to formalised institutions or causes, slightly less than half of respondents gave money and/or goods (45% respectively)

¹⁵ Everatt and Solanki, G (2007): A Nation of givers? Results from a National Survey of Social Giving, in 2003

directly to the poor – street children, people begging on the street and so on. R921m is given by South Africans per month to social causes. The total volunteering time to charities and organisations amounts to a total of 52m hours per month.

Four out of five respondents (80%) who had given money had given it to a religious body, while a third (29%) had given it to organisations working for the poor. Organisations working for children were also well-supported (18%), followed by issues on HIV/AIDS, people with disabilities and homeless people (14% respectively). Respondents indicated that the most deserving cause they would support if they could were children or youth (22%), HIV/AIDS (21%) and 'the poor' (20%). These were followed by a set of smaller categories, including people with disabilities (8%) and the elderly (5%).

The report suggests that 'it is notable that 2% of respondents believed that their preferred political party was the most deserving cause, perhaps reflecting how recently South Africa began normalising and the on-going importance of politics in many lives'. One percent of respondents were sufficiently cynical to say 'nothing' was a sufficiently deserving cause. The 'other' category included a wide-ranging set of answers including animal welfare, environmental concerns and others."

d. Corporate Giving

According to a paper¹⁶ presented at a conference, in 2004 corporate giving amounted to R4bn, but that other calculations indicate at least R2.4bn. It states that prior to 1976 funding was relatively small and that despite exceptions, the latter saw giving as important to defuse radicalism and show opposition to apartheid. Between 1976-1990 corporates increasingly funded initiatives to change public policy or remedy apartheid's effects, and using NGOs as intermediaries became common. Between 1990-1994, giving was outsourced, to for example the National Business Initiative. In 1994-1998 companies began to form Trusts and link corporate giving to business strategy. In 1998-2002 a more 'professionalised' approach emerged. The Business Trust, a joint initiative of some 145 companies working in partnership with the government, suggested a turn to funding within government policy; sustainability issues moved rapidly up the agenda with social responsibility maturing to become an integral part of business strategy. From 2002 to present the 'professionalisation' trend continues with Boards and executive management seeking ways to align corporate giving more closely with corporate goals and strategy. Increasingly formalised procedures for managing giving have developed, rules-based systems run by professional staff. Black empowerment companies start becoming involved in CSI; also the rise of employee volunteering programmes in companies such as the Charities Aid Foundation, where staff gives to an organisation of their choice, often actively participating in where the money goes.

In terms of what to support, there seems to be convergence on a few fashionable topics. Education has tended to take the biggest slice, not only because of tax concessions. Spending on HIV/Aids is growing partly due to an inadequacy of government intervention in this area and partly because of the impact on productivity and the operations of companies. Environmental concerns are also slowly moving up the agenda. Small business promotion is also supported as it is seen as a way to mop up unemployment and drive economic growth. Current emphasis tends to fall quite heavily on development

¹⁶ Presented by Judi Hudson at the ISTR conference, Bangkok, 10 July 2006 entitled Corporate Giving in the South African Context

projects rather than attempts to influence public policy. While in the 1970s, 1980s and 1990s corporates funded a variety of organisations and sought to promote policy change, this focus has waned since the demise of formal apartheid.

In general terms, business seems to have shifted in the post-apartheid era from a concern to be seen to be pursuing change and opposing apartheid to a desire to show that it is fitting in with the new political reality.

e. Community Investment and Collaboration with Government and Corporates

An international study¹⁷ reveals that increasing numbers of NGOs are making strategic decisions to engage with business and governments in an effort to reform market systems, in sharp contrast to the confrontational posture that has characterized previous years. At the same time, however, there is concern that such a move could compromise the independence of NGOs and draw criticism that they are 'selling out'.

"The good news for NGOs is that they are emerging as vital ingredients in the health and vitality of markets," said John Elkington, Chair of SustainAbility and one of the report's authors. "They are also highly trusted, far more so than business or governments. The bad news is that unless they recognise and address growing financial, competitive and accountability pressures, their impact will be significantly reduced. For those that respond intelligently and in time, the prize is to be amongst the most influential institutions of the 21st century."

Gavin Power, Public Affairs Director of the UN Global Compact and a partner in the research said: "The trends illustrate that many NGOs are moving beyond a culture of criticism to one of engagement with business and other partners in a search for solutions. While at times it may be difficult for NGOs to collaborate, the scale of today's social and environmental problems requires it."

To help NGOs handle the three new challenges, the report recommends that they:

Ensure higher levels of transparency and disclosure around funding and effectiveness, to address the accountability squeeze. Despite being key advocates of corporate accountability few NGOs have adopted the same rules as their business counterparts, maintaining it compromises their flexibility. The report predicts that additional transparency and accountability will become prerequisites for NGO success in entering the mainstream and crucial for retaining their position of trust - indeed some critics are beginning to accuse them of enjoying a free ride innovate in the area of branding and promotional practice to establish themselves as 'good investments', rather than relying on funding fuelled by public anger and guilt.

This is essential if they are to combat the financial pressures driven by stock market falls and increased competition from growing numbers of organisations that tout their ability to solve social and environmental problems including 'socially-responsible' businesses and other NGOs develop greater commercial understanding so that they can work in partnership with businesses and governments towards the development of market-based solutions.

¹⁷ SustainAbility; The 21st Century NGO: In the Market for Change--involved a global study of the NGO landscape; 2007

The report concludes that only through doing so, will they be able to truly engage and shape markets effectively.

Should the advice offices manage to transform themselves into legal entities with sound governance, there is no reason why they should not open a trust account and have community members donate a nominal amount each month, for the running costs of the office. This could quickly translate into a valuable source of income. Of course this will be dependant on what services are being rendered and the quality thereof.

The Broad-based Black Economic Empowerment (BEE) Act also provides opportunity for development which local communities in conjunction with the advice offices could take advantage of. The BEE Scorecard allocates a 10% weighting to the residual element (Code 700) and prescribes that companies spend 3% of profit-after-tax on:

- Industry initiatives to facilitate the inclusion of black people in the sector, and industry-specific initiatives to promote black economic empowerment
- CSI

Code 700 defines CSI as 'non-recoverable contributions to society and community extraneous to regular business activities in the areas of health, education and training, environment, arts and culture, sport and a range of social development programmes.

The Mining Charter requires mines to contribute to local economic development (LED) in the communities surrounding their operations. On the other hand local municipalities need to implement their integrated development plans (IDP) but do not have the resources to do so. The advice offices could be instrumental in bringing these two groups together for LED.

There is no reason also, why these advice offices, once appropriately registered should not also apply for a Public Benefit Status and thereafter act as an agent for the selling of community products.

Once the advice offices have been registered, they could very quickly put together a fundraising and resource mobilisation strategy (once sufficient capacity has been installed). Local businesses and corporates could then be targeted for support. 'The CSI (Corporate Social Investment) sweet-spot is the intersection between community development and business operations, where there are measurable gains for both sets of needs and interests.'¹⁸

f. Other partnerships

It has been suggested that trade unions could support advice offices, as these are the offices that see to the legal and other needs of bread-winners' families. Due to time constraints, the possibility had not been tested.

Recommendations

It would appear that there is a significant amount of local funding available but not necessarily for human rights. According to an interview with Prof. Adam Habib, formerly of the HSRC, conducted by Anil Naidoo, there is no reason why funding proposals to local corporates and individual South African philanthropists cannot be packaged in such

¹⁸ Trialogue; The CSI Handbook; 9th edition

a manner that might make them more willing to support the 'deepening of democracy' rather than an 'advice office'. The former resonates more clearly in the current political context of in-fighting within the ANC around a successor to President Mbeki, the strikes within the public sector, the firing of the Deputy-Health Minister, the suspension of the head of the National Prosecutions' Authority and the civil unrest in Khutsong and other areas over the delivery of services. The argument on 'packaging' is a crucial one.

What this means is that the advice offices are not just there to provide legal services. In fact in many instances they provide far more than that and are pivotal to development in their communities. It is therefore fair to say that the **advice offices are important factors in participatory democracy and in the deepening and strengthening of our democracy**. These in turn lead to a stable government and economy. In a test conducted with one corporate, a question was asked if they would fund advice offices. They were unable to do so, given their focus on school children and nutrition. When it was explained how important the advice offices are to democracy, there was an interest. This subtle shift in focus resulted in evoking a more positive understanding of the role of advice offices but of course more lobbying will have to be done to precipitate a more concrete response. Whether this shift takes place, only time will tell. However, what is important is that efforts must be made to tap into this source of support.

In so far as ODA, until there is a restructuring of the state budget, ODA remains an important factor for the funding of human rights. Whilst human rights are not necessarily an ODA priority, EU funds to the Foundation for Human Rights (FHR) over the period of its first and second programme have been significant.

FHR has, on the other hand the support of the advice offices as its flagship programme. While there is uncertainty on whether FHR will continue to receive EU funds, NADCAO should continue liaising closely with the Director-General in the Department of Justice and National Treasury, in the event that the EU decides to re-direct FHR funds to government budget support. If this becomes a reality, Justice must be convinced that a large slice of this be committed to advice offices. Thus a more formal relationship ought to be established with Justice.

According to Dr Russell Ally, Director of the Mott Foundation, support to advice offices has dwindled with the withdrawal or impending withdrawal of NiZA, Joseph Rowntree and ICJ-SIDA. If FHR had to now collapse these organisations will collapse completely.

According to a report in the Nonprofit Quarterly¹⁹ a conference of foundations and NGO leaders met in August 2007, in Missoula, US, to talk about rural philanthropy. Although it is too early to assess gains made, rural philanthropy is now a primary agenda item. NADCAO could possibly organise a similar meeting of donors, corporates, local philanthropists and government, in South Africa, to raise awareness and support to advice offices. The Multi-Agency Grantmaking Initiative (MAGI) is a very similar initiative. MAGI is a consortium of European donors. For every Rand raised by MAGI, HIVOS will contribute matching funds. MAGI initially focused on farm workers, but after some negotiation by Black Sash, they will now also support advice offices. This provides a window of opportunity for donor support for the advice offices.

¹⁹ See www.nonprofitquarterly.org/section/924.html

Ally also makes mention of the Ditikeni Investment Company (www.ditikeni.co.za). Ditikeni is a leader in broad-based empowerment that provides financial sustainability for 23 NGOs. Black Sash is a member of Ditikeni. These deliver to the poorest of the poor. Ditikeni is an investment holding company and since 2000 has sought out BEE opportunities. Ditikeni's aim is to build up a capital base for the shareholding NGOs. Profits are distributed directly to development organisations. This might be a good model to look at for the advice offices, especially if they are registered legal entities. A community trust could also be established or a trust account could be opened by the respective advice office for the community to contribute a nominal monthly amount towards the running costs of the advice office or for BEE investment. This is perhaps a project that NADCAO could lead on.

Partnerships with government appear to be an obvious avenue to enhance sustainability. This is because the advice offices provide many of the services that ought to be provided by government. There are many examples of this sort of mutually beneficial partnership. The Land Legal Cluster is but one. The facilitation of partnerships between mines and local government as alluded to already could also be a useful source of revenue.

Advocacy

The political and advocacy environment must support the formation of coalitions and networks, and offer advice offices the means to communicate their message through the media to the broader public, articulate their demands to government officials, and monitor government actions to ensure accountability. The advocacy dimension looks at the advice offices' record in influencing public policy. The prevalence of advocacy in different sectors, at different levels of government, as well as with the private sector is important. The extent to which coalitions of advice offices and indeed paralegals have been formed around issues is also core to sustainability.²⁰

While clearly, NADCAO is not a representative body of advice offices, it is certainly an enabler or catalyst for change. On the other hand, there is also no significant paralegal representative body. The lack of both representative bodies has had a negative impact on sustainability, as many of the issues above are not adequately catered for.

Without going into the reasons for the collapse of the National Community-Based Paralegal Association (NCBPA), it would suffice to say that any initiative for the formation of a new paralegal representative body and an advice office representative body must be done with much caution, and must be done in the context of long-term sustainability that best serve their respective constituencies.

Recommendations

It is for this reason that it is suggested that an advice office *and* paralegal network/alliance/coalition be piloted in KwaZulu Natal. It is understood that there could be sufficient will but perhaps less consensus. The latter might be as a result of a lack of an appropriate platform for firm consensus-building. NADCAO has scheduled a stakeholders' meeting in Durban on 1 November 2007, which could provide an opportunity for an initial discussion on a consultative meeting to discuss this.

²⁰ The U.S. Agency for International Development (USAID) released the 10th edition of the NGO Sustainability Index, a key analytical tool that measures the progress of non-governmental organizations (NGOs) in the Europe and Eurasia (E&E) region. See http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2006/

It is worth highlighting that by virtue of the precarious nature of the advice office and paralegal sector, building effective partnerships will be fundamental to sustainability. There is a need for advocacy and lobbying around the Legal Services Charter and the Legal Practise Bill; the need for establishing formal legal structures for individual advice offices; diversification of fundraising, resource mobilisation and income generation.

The efficacy of any strategy around this will be dependant on partnership building in the advice office and paralegal sectors. For the purposes of this study, the focus below is on advice offices, but there is no reason why a similar approach cannot be taken in regard to the paralegal sector.

The consultative meeting should discuss:

- The draft objective and purpose of any proposed partnership and how NADCAO will fit into this
- Criteria for membership and mechanisms for including new members and sustainability
 - What the partnership will and will not do
 - A legal structure and legal implications
 - Available funds and fundraising and resource mobilisation
 - Selection of an interim steering committee
 - Task forces to draft a strategic plan and coordinate different activity and assess progress and make necessary changes
 - Communication strategies
 - A draft code of conduct to ensure mutual respect and responsibility
 - Enshrining the above in a memorandum of understanding
 - Committing representatives to take the memorandum of understanding back to their organisations for endorsement

The endorsed memorandum will then form the basis for the formal establishment of a permanent partnership.

In deciding on partnerships, issues to consider include: Are there direct lines of communication between advice offices and policy makers? Have advice offices formed issue-based coalitions and conducted broad-based advocacy campaigns? Have these campaigns been effective at the local and/or national level at effecting policy change? Are there mechanisms and relationships for advice offices to participate in the political process? Have advice offices led efforts to raise awareness of problems or increase support for a particular position? Is there awareness in the wider advice office community on how a favourable legal and regulatory framework can enhance advice office effectiveness and sustainability? Is there a local advice office advocacy effort to promote legal reforms that will benefit advice offices, local philanthropy?²¹

²¹ The U.S. Agency for International Development (USAID) released the 10th edition of the NGO Sustainability Index, a key analytical tool that measures the progress of non-governmental organizations (NGOs) in the Europe and Eurasia (E&E) region. See http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2006/

Service Provision

According to a report commissioned by NADCAO²², 167 advice offices in South Africa surveyed in 2005, managed 120,500 cases. It also states that this had a cascading benefit to 482,000 people. Appropriately and strategically, these offices have also shifted from focusing on state repression during the pre-1994 period to assisting communities accessing their socio-economic rights. There is of course no doubt that this figure is remarkable and clearly indicates that the advice offices perform a crucial service to their constituent communities. What the NADCAO report does not indicate is the quality of service offered by the advice offices; what the training needs are; how many matters were successfully resolved; how many matters were unresolved due to incompetence or a lack of adequate training and what amounts of monies have been recovered. These omissions may well be explained by the terms of reference for the report.

NADCAO's establishment of a national-based central case management system might well start providing this information. This information is important for the purposes of quality control and relates directly to the question of training of the paralegals.

A survey²³ conducted by Fahamu SA in 2004, looked at amongst other things, the training needs of CBOs in Southern Africa. It found that the lowest incidence in terms of number of people trained was in South Africa and Zimbabwe. Every single organisation felt that they had insufficient training.

According to the FHR report 'another relevant group of responses (18 per cent of cases) indicated the development of training skills and other services as a viable and effective way to improve their general sustainability. According to those who subscribed to this group, advice offices could improve their general sustainability if they managed to offer a wider variety of services not only to the local communities, but also to specific local stakeholders. For instance, some advice offices were funding the training of staff members to register as accountants or auditors. In this way, they were confident to acquire skills that could generate income for the advice office, for example by providing legal or financial assistance to local business. Another two advice offices were in the process of applying at the relevant Sector Education and Training Authority (SETA) in order to register as official training providers. In this way, they thought they would be able to provide a more specific and, above all, accredited training to volunteers who wanted to become paralegals.

In their view, therefore, ensuring sustainability was not only seen as acquiring financial independence, but also as diversifying the field of action and the service offering. In a rather similar vein, a few respondents (16 per cent) maintained that sustainable activity could be reached by associating with other similar organisations. The establishment of clusters of advice offices was thought of as a way of developing skills and exchanging information, but also as a more productive way to influence local institutions and apply for funds from donor agencies.²⁴

²² NADCAO; Social Justice for the Poor: The Value of Community Advice Offices in a Contemporary South Africa; 2007

²³ Fahamu SA; Community Based Organisations: The Emerging Force Within the Third Sector: 2004

²⁴ Fioramonti, L; The Foundation for Human Rights and Advice Offices: Sustainability and Future Perspectives; undated

Sectoral sustainability will require a critical mass of advice offices that can efficiently provide services that consistently meet the needs, priorities and expectations of their constituents.

Recommendations

It is recommended that a training development needs assessment be included in NADCAO's proposed audit of advice offices. Also recommended, is that paralegals take advantage of the South African Qualifications Authority's registered qualification, the National Diploma: Paralegal Studies. There is also no reason why this cannot be paid for by the Safety and Security Sector Education and Training Authority (SASSETA).

Infrastructure

A strong sectoral infrastructure is necessary, that can provide advice offices with broad access to local NGO/CBO support services to inform, train and advise advice offices; provide access to NGO networks and coalitions that share information and pursue issues of common interest. This type of NGO which provides support is referred to as Intermediary Support Organisations (ISO). In this study, it was found that there is no dedicated ISO to the advice offices, but that the Chapter 9 institutions, the Legal Aid Board, some government departments and NGOs do provide capacity building and other services.

Recommendations

It is suggested here, that NADCAO is currently playing the role of ISO to the advice offices and of course the challenge is that while the advice office and paralegal sectors start organising themselves into coherent and representative provincial and national bodies, NADCAO should strengthen and entrench itself as an ISO to advice offices and perhaps paralegals.

In doing this, NADCAO needs to position itself strategically. Some questions it could ask are: Are there other ISOs, NGO resource centres, or other means for advice offices to access information, technology, training and technical assistance throughout the country? Do ISOs and resource centres earn some of their operating revenue from earned income and other locally generated sources? Do local community foundations and/or ISOs provide grants from either locally raised funds or by re-granting international donor funds?

Do advice offices share information with each other? Is there a network in place that facilitates such information sharing? Is there an organisation or committee through which the sector promotes its interests? Are there capable local advice offices/paralegal trainers and training available in rural areas and in urban areas? Are training materials available in local languages?²⁵

²⁵ The U.S. Agency for International Development (USAID) released the 10th edition of the NGO Sustainability Index, a key analytical tool that measures the progress of non-governmental organizations (NGOs) in the Europe and Eurasia (E&E) region. See http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2006/

Public Image

During this study, every single person interviewed expressed their concern over the public image of paralegals. There is a misperception that *all* paralegals do not have sufficient training and that they are not professional. This is not true for many paralegals and is a dangerous stereotype. Unfortunately, the stereotype is perpetuated through the misconduct and lack of training and professionalism of some paralegals; the lack of their regulation and by the lack of understanding of potential stakeholders of the work of advice offices and paralegals and a lack of a proper appreciation of the role they play in their communities.

For the sector to be sustainable, government, the business sector, donors, philanthropists and communities should have a positive public image of advice offices and a broad understanding and appreciation of the role that advice offices play in society. Public awareness and credibility directly affect the advice offices ability to recruit members and volunteers, and encourage indigenous donors. A serious look into the extent and nature of the media's coverage of advice offices, the awareness and willingness of government officials to engage advice offices, as well as the general public's knowledge and perception of the sector as a whole is needed.

Typical questions to ask include: Do advice offices enjoy positive media coverage at the local and national level? Do the media provide positive analysis of the role that advice offices play in civil society? Does the general public have a positive perception of advice offices? Do the business sector and local and central government officials have a positive perception of advice offices? Do advice offices publicise their activities or promote their public image? Have advice offices adopted a code of ethics or tried to demonstrate transparency in their operations? Do advice offices publish annual reports?²⁶

Most of the above can be answered in the negative, which in itself is an indication of the amount of work that needs to be done to raise awareness on the value of advice offices to society. There are various procedural issues that need to take effect to enhance the sustainability of the advice offices.

These include advice offices being registered as legal entities with proper governance; appropriate capacity building; and the establishment of advice office and paralegal sector representative bodies. Also important is a media strategy that can be embarked upon immediately.

Recommendations

Reference is made to an article²⁷ on media strategies for NGO sustainability and of course it applies squarely to advice offices:

“In a world of information explosion, knowing who to communicate to, what, why, when and how, is becoming vital. Unless you can afford to pay a full-time staff member, get yourself a dedicated volunteer with ample time whose primary responsibility is just to focus on the implementation of this strategy. Here are some ideas from my experience:

²⁶ Ibid

²⁷ Julie, F; Media Strategies for NGO Sustainability; see www.sangonet.org.za

- **Design your own newsletter:**
- **Network update/Board update/Donor update:** This is mostly in electronic form and consists of 1-2 pages to inform your current and potential board members, strategic advisers, patrons and network partners about your successes and challenges. And let them know what you are doing to address your challenges and how you plan to build on your successes
- **Annual report:** Since an NGO needs to publicly account for the resources entrusted to it, it must produce an annual report. This is also a legal obligation in terms of the NPO Act. This is one way of showing that you are transparent. Make sure that your annual report is sent to all relevant stakeholders and ensure that it is a truthful reflection of your performance. You only fool yourself by lying or exaggerating results of your work and compromise the trust others have in your organisation
- **Make press statements and send letters to the editor:** Depending on the sector within which you operate, make press statements or write letters to selected newspapers about public issues that affects you e.g. child abuse, women abuse, unemployment, health, landlessness, human rights, etc. Show others that you are prepared to take a stand and to defend it
- **Invitations to journalists:** Whenever you launch a new program or have a graduation or any other public event, invite journalists to attend. In this way you strengthen relations with newspapers. One story in one paper can potentially reach thousands of people. Make sure that journalists are treated like donors. Perhaps journalists should be invited to the stakeholders' meeting on 1 November, and if not that at minimum, a media statement ought to be released
- **Strategic adverts in newspapers:** Find out which newspapers are read mostly by your various stakeholders. And if you can afford it, place strategic adverts in them. First try to negotiate free adverts or otherwise highly discounted adverts. Make use of "community diaries" in newspapers to advertise your work
- **Community murals at strategic points:** Contact residents in your local community to offer their walls for murals to advertise your work or a special event. Most people will be too happy to support your work in this way as their contribution to community upliftment
- **Information boards:** Develop information boards that can be placed at strategic places wherever people assemble or need to queue for a service e.g. at an ATM. Chain the board to a pole so that it cannot be removed easily. Make sure all your contact details are correctly reflected on the board with short, simple and clear messages
- **Posters, pamphlets, brochures:** Develop posters, pamphlets and brochures that do not date quickly and put them up or leave them at shops, clinics, schools, churches and surgeries or any other public space where you are dealing with a captured audience. This can be a potent form of marketing your work since people for e.g. in a surgery will instinctively read what they see. And they may have ample time to write down your contact details!
- **Develop a website or blogspot:** A website allows you to highlight your work on a global scale. If you have one already, continuously update it to ensure information is as fresh as possible. Websites with information that dates back to more than 6 months can create an impression of inefficiency. Websites can be expensive to maintain and hence a blogspot can be a substitute for a website. This is a free service on the Internet and requires no domain fees. Space can be unlimited
- **Hold open days/special events like lunches, etc:** This is becoming more and more popular amongst NGOs. It can be a powerful means to introduce and showcase the results of your work to various stakeholders. Your primary objective is always to get

potential donors to where the action is. Organize these events properly and at least 3 months in advance to make maximum impact. Once again, get journalists to cover the event to optimize awareness in the community. Organisations that are corrupt don't have time to hold open days because they have too much to hide!

- **Block emails:** This is low cost and can be very effective. Always collect email numbers of relevant stakeholders and keep them updated. Send emails via "BCC" (blank carbon copy) method to hide the identity of the receiver in case of people using email numbers for spam purposes.
- **Use community radio:** Community radios are there to highlight issues within the community. Most of them have special programs dedicated to community issues. Find out who is the station manager for the community radio closest in your area of operation and start building a relationship. Invite them to your events and submit articles to them about your organisation and any special events. Enquire from them about special time-slots to highlight special issues that you are qualified to comment on. Even commercial radios have community dairy slots. Use it!
- **Write to journals/magazines/websites:** Learn to write and offer articles focusing on the sector to magazines, journals or websites. Many networks with websites offer to host articles for others to download. Instead of starting your own magazine/journal find out what exist already and offer your articles to them
- **Use faxes:** This method can be costly and time consuming compared to email. But it can be highly effective. Whereas email can just be deleted, faxes must first be read before it can be destroyed. Use it when you need to inform a special group of people about a certain issue or event
- **Block SMS's:** Use this method if you need to mobilize support for a cause in the shortest space of time. In rural areas this can be very effective since most people will have access to cell phones (maybe not airtime!). When used during off peak times it can also be cost effective. When you are part of a network and need to communicate fast, then this method can be very useful
- **T-shirts, stickers, buttons:** Don't underestimate the importance of these. They can be low cost and permanent. Put your contact details on your t-shirts or stickers. Give them to your partners and beneficiaries. They will be marketing your organisation for free!
- **Use your letterhead:** Very few organisations realize the importance of using their letterhead as a means of marketing themselves. Develop a simple but effective letterhead with full contact details, NPO number, tax exemption nr, board members, strategic advisers and patrons. Include your vision statement and logo
- **Develop a DVD:** This can very effective visual information about your organisation. Keep it short, not more than 10 minutes. People don't have time to watch a feature film! Try to cover all the departments in your organisation
- **Television:** This can be useful especially if you operate on a national scale. Cultivate journalists in the television industry and let them know that they can contact for commentary or documentaries
- **Word of mouth:** This is the most powerful means of media. And everybody in the organisation should be involved in this. Make sure members are well informed to talk about the organisation anytime and anywhere!

Interviews during the course of this study have raised the issue of a value proposition for the advice offices. It is suggested that the following be used as a building block towards finalizing a statement that is generally accepted by advice offices.

"Advice offices are staffed by trained and committed paralegals and provide essential services to communities including access to justice and awareness raising campaigns.

They are integral to the socio-economic development of our most disadvantaged communities and play a significant role in enhancing participation in government and deepening and strengthening our democracy.”

Part C: Results of Fundraising and Resource Mobilisation

During the limited duration of this study, a decision was taken to focus the bulk of the time available to explore avenues for funds and resources for the advice offices in KwaZulu Natal.

Department of Justice

The Regional Head of the Department of Justice, Brigitte Shabalala was approached for possible support. The angle taken was a very simple one and one that would bring immediate benefit to government, the advice offices and most importantly, rural citizens of KwaZulu Natal. The proposal is to integrate the advice offices into the implementation of the Department of Justice’s Medium Term Strategic Framework – 2005-2008 (MTSF - 2005-2008), which has as its core focus, ‘access to justice for all’. Simply put, the existing advice offices offer an extensive infrastructure for the implementation of the MTSF, thereby obviating the need for the creation of new and additional mechanisms. The Regional Head discussed this approach with the Director-General of the National Department of Justice and a decision was taken to pay each paralegal working in the advice offices a stipend which will be reviewed annually.

The stipend will relate to the advice offices assisting community members with the following matters:

- Maintenance Applications
- Domestic Violence
- Public Education on:
 - Service Charter for Victims of Crime
 - Restorative Justice
 - Bail
 - Small Claims Courts
 - Equally Legislation
 - Human Rights

In response to the Department’s request, a list of advice offices, incorporating all Community Law and Rural Development Centre (CLRDC), Ithembalabantu and Black Sash offices in KwaZulu Natal was forwarded to the Regional Head. The Regional Head has drafted a memorandum on this and has forwarded it to the Director-General.

The Regional Head has also offered computers available at the Regional Office in Durban, for the advice offices. Should additional resources be needed, NADCAO would be required to draft a proposal for the Director General to consider. If the advice offices’ needs in this respect are beyond what the Department of Justice is able to provide, then this proposal will be forwarded to the Criminal Justice Strengthening Programme, which is funded by USAID.

NADCAO committed that a proposal would be forthcoming, as additional resources including equipment and training will be needed. The proposal has not been submitted as, additional information is needed on the advice offices needs, which is currently unavailable. **This information must be gathered immediately and a proposal should be urgently submitted to the Regional Head.**

The above development heralds a turning point for the advice offices in terms of a formal partnership with the Department and a follow-up on the stipend to be paid must be done as urgently as possible. In addition, the case management system already referred to must become operable as quickly as possible, in order for there to be an appropriate monitoring mechanism in relation to the matters the advice offices will be attending to on behalf of the Department. This information as well as other matters being handled by the advice offices needs to be analyzed and regular reports should be submitted to the Department. NADCAO needs to nurture this relationship with the Department, in line with the media strategy discussed above.

Office of the Premier (KwaZulu Natal)

The Deputy Director-General, Nana Ngobese, was approached very much in a similar manner to the Department of Justice, except with a focus on how the advice offices could assist in local government service delivery. She introduced NADCAO to Tsietsi Telite, General Manager for Service Delivery Improvement, in the Office of the Premier, and Professor Ndaki, Head of State Law. A presentation on the role of the advice offices in service delivery was made. A number of issues were agreed upon for them to action by way of referral to their superiors:

Given the important role advice offices currently play in their communities, the advice offices are keen to establish a formal relationship with the Office of the Premier
Should the Office of the Premier entertain this request? If so, then the following could be considered:

- Linking the advice offices to their Public Service Training Academy which is based in Durban. In this way, training could be provided to paralegals on a pro bono basis; in addition, skilled trainers from the advice offices could be paid to provide training services to the Academy
- as the Office of the Premier is keen to provide training to communities on the Promotion of Administration of Justice Act, the Promotion of Access to Information Act and the National Credit Act, the advice offices could be utilised to provide such training
- provision of funds to support advice offices
- As the Office of the Premier is in the process of rolling out 'one-stop' Citizen Assistance Centres, paralegals could be seconded to these. As these Citizen Assistance Centres will be initially rolled-out on a district level, the advice offices at local level could be used to house the Centres. In this regard on-site visits will have to be conducted by the Office of the Premier to assess suitability
- Mr. Telite will look into what can be done for a presentation on the advice offices to be made at a full sitting of the Provincial Legislature. It was felt that this would provide an excellent opportunity to fast-track a collaboration with the advice offices
- Mr. Telite will contact the Regional Head, Department of Justice in order to discuss how the Office of the Premier could feature in the collaboration between the Department of Justice and the advice offices

Mr. Telite committed himself to take the above matters forward within the structures of the Office of the Premier and to give feedback within two weeks. On 12 October, he advised that they would need more time and that he would revert to NADCAO during the course of the week beginning 15 October 2007. In addition, as the Regional Head, Department of Justice was unavailable for a telephonic discussion; Mr. Telite advised that he would do a follow-up with her during the week beginning 15 October 2007.

NADCAO needs to monitor these developments very closely and do the necessary follow-up with Mr. Telite. The possibility of being given an opportunity to address the Provincial Parliament is of major significance and NADCAO needs to enhance this process through strategic lobbying with the MEC for Justice.

Legal Aid Board

The Head of the Durban Justice Centre, Kishore Mehtha, has agreed to admit paralegals to his office for the purposes of training. This will be done through attachment of paralegals to the Durban Justice Centre attorneys. This needs to be followed-up with a meeting with Mr. Mehta to decide on the logistics of implementation.

Vela Mdaka, Regional Operations Executive, Legal Aid Board, has agreed to sign a Memorandum of Agreement with NADCAO for the provision of on-site legal-back up services and capacity building to the advice offices. A draft agreement is attached.

Mott Foundation

Vuyiswa Sidzumo of the Mott Foundation has indicated an interest to fund a closer collaboration between the advice offices and the Legal Aid Board, possibly to enhance any signed agreement referred to above vis-à-vis Mr. Mdaka.

In this way the advice offices could receive a donation from the Mott Foundation for referral services to the Justice Centres and the Legal Aid Board could receive donations for capacity building.

Once more, it is recommended that NADCAO develop a proposal on this to the Mott Foundation, with the Legal Aid Board as partner to the project. This idea has met with the approval of Mr. Mdaka.

Shepstone and Wylie

Vusi Nkosi, Partner at Shepstone and Wylie is willing to submit a proposal to his Board for the support of the advice offices. Here again, NADCAO needs to develop a proposal for this.

Other Corporates

Please refer to Annexure B. The interface with corporates has been rather disappointing. This is not surprising and confirms the need for effective lobbying of this sector and the re-packaging of the advice office concept for the purposes of support, to corporates and indeed philanthropists, donors and government, as discussed previously.

Legal Resources Centre (Durban)

A proposal was made to Mahendra Chetty, Director of the Durban office of the Legal Resources Centre, that his office could support the registration of legal entities on behalf of the advice offices in KwaZulu Natal. He is keen to do this and has suggested that he assess whether this falls within the mandate of his office. He indicated that he would communicate during the course of the week beginning 15 October 2007. If so, they would fund the registrations. The Legal Resources Centre was motivated to participate in and collaborate with NADCAO. In this regard, he committed to sending a representative to the stakeholder meeting on 1 November 2007.

Way Forward

It is clear from the above, that a number of issues need to be actioned. Importantly, NADCAO should, during this period take the requisite strategic decisions to concretise the above gains and nurture the relationships established.

Annexure A: Contacts made/Interviews undertaken

Company	Person	Email	Response
Diakonia	Nomabelu Mvambo-Dandala	the.director@diakonia.org.za	None
Chevron	Rick Robertson JJ Ngubo	rjkrobertson@telkomsa.net jjngubo@chevron.com	Will not fund. Priorities are education, HIV/AIDS awareness, poverty alleviation and environmental education
SAHRC	Victoria Maloka Tanuja Munnoo	VMaloka@sahrc.org.za TMunnoo@sahrc.org.za	Are keen to collaborate. With support from Mott, conducted paralegal training nationally in 2006. Asked to contact Tanuja (KZN office) to take possible collaboration further. Wrote to her, no response. NADCAO to follow-up
Dept. of Social Welfare	Mr. Mlawu	gazut@uld.kzntl.gov.za	No reply
Local Government	Lennox Mabaso Mr. Bhebe	lennox.mabaso@kznlgt.gov.za ngqabuth0.bhebe@kznlgt.gov.za	No reply
Edcon	Xolile Caga	XCaga@edcon.co.za	Does not fit in with their priorities but asked to participate in Jet Awards
BHP Billiton	Norah Segoati	Norah.Segoati@bhpbilliton.com	Can only fund Economic Development and Socio-economic development
PPC	Sam Hlabati	shlabati@ppc.co.za	No response
Woolworths	Katy Hayes	021 4072618	Cannot fund. Have school children and nutrition as priorities
Nedbank	M Reabetsoe	reabetsoem@nedbank.co.za	No response
Vodacom Foundation	Monde Mama	foundation@vodacom.co.za	No response
Sentech	Pranill Ramchunder	pranill@sentech.co.za	No response
Massmart	Brian Bleroni	bleroni@massmart.co.za	No response

Company	Person	Email	Response
Telkom Foundation	Nonhlanhla Shangan	shanganp@telkom.co.za	No response
SASSA	Dianne Dunkerley	DianneD@sassa.gov.za	Responded with dates to meet. Replied to confirm. No reply
Legal Aid Board	Vela Mdaka Kishore Mehta	VMdaka@legal-aid.co.za KishoreM@legal-aid.co.za	See report
Department of Justice, Regional Head	Brigitte Shabalala	BShabalala@justice.gov.za	See report
Office of the Premier	TK Telite	telitet@premier.kzntl.gov.za	See report
Legal Resources Centre	Mahendra Chetty	mahendra@lrc.org.za	See report
Shepstone & Wylie	Vusi Nkosi	nkosi@wylie.co.za	See report
Mott Foundation	Vuyiswa Sidzumo	vsidzumo@mott.org	Interview
NADCAO/SGS	Shaun Samuels	shaun.samuel@iafrica.com	Interview
NADCAO/Black Sash	Evashnee Naidu	enaidu@blacksash.org.za	Interview
NADCAO/Black Sash	Divya Naidoo	drnaidoo@blacksash.org.za	Interview
NADCAO/Black Sash	Marcella Naidoo	mnaidoo@blacksash.org.za	Interview
NADCAO/CLRDC	Langa Mtshali	mtshali@clrdc.org.za	Interview
NADCAO/FHR	Hanif Vally	HVally@fhr.org.za	Interview

Annexure B: Draft Memorandum of Agreement between NADCAO and the Legal Aid Board

Recognising that human Rights remains an elusive reality to many South Africans, mainly due to poverty, a lack of information about basic rights, and access to appropriate legal and social institutions.

Recognising that these challenges are even greater for the poor, rural and marginalized communities in our country.

Recognising that the community-based advice office sector, through its offices, provides an essential service that not only contributes to social cohesion but helps makes tangible the concept of human rights.

Recognising that the advice offices are the facilitators that help vulnerable people access government services and that they provide the first level of support and assistance to many who don't have the means to access other forms of legal representation.

It is hereby agreed as follows:

That the National Alliance for the Development of Community Advice Offices (NADCAO) and the Legal Aid Board, KwaZulu Natal Regional Office (LAB) is desirous of promoting access to justice for all in terms of the South African Constitution and other documents, including the Medium Term Strategic Framework (22205-2008) of the Department of Justice. In consequence of this, LAB will provide on-site back-up legal services and capacity building training to the advice offices associated with NADCAO. The exact extent of this provision will be regulated by a strategic plan to be agreed upon by LAB and NADCAO, and which will form an addendum to this agreement.

It is further agreed that NADCAO will develop a proposal to be submitted to the Charles Stewart Mott Foundation and other donors for enhancing and augmenting such provision and that LAB will be a partner to such proposal and as such will render its approval to such proposal before submission to any donors.

Dated at this day of 2007.

Signed by:

“Respective representative of NADCAO and LAB”