

CAO Sector efforts to gain statutory recognition and regulation and ensure state funding for CAOs

CAOSA Presentation to the OSF Access to Justice and Legal Empowerment Workshop

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Background

- Community Advice Office (CAOs) give a free service, picking up on the constitutional obligations of government to give access to justice to the poor and marginalized.
- Since 1990, numerous attempts have been made by government and the CAO sector to formally recognize Community-Based Paralegals (CBPs) and have them regulated through statute.
- Despite challenges on the sustainability of CAOs, they remain essential for realizing democracy as they play a primary role in translating human rights as enshrined in the Constitution into reality.

Past engagements

- Paralegals and community advice offices have been part of the social and political landscape in South Africa since the 1930s.
- The National Community Based Paralegal Association (NCBPA) a membership organisation, existed from 1993-2006 and primarily focused on the idea of professional recognition for Community-Based Paralegals (CBPs).
- With the NCBPA, was the National Paralegal Institute (NPI) a support organisation , through which CAOs participated in the processes leading up to the initial drafting of the Legal Practice Bill and Legal Services Charter, which sought to recognize CBPs as part of the wider legal profession.
- Nadcao was formed in 2005 and continued to advocate for the recognition and regulation of the CAO sector.
- ACAOSA was launched in 2013 as a membership organisation and took on the responsibility of recognition and regulation of the Sector.

Past engagements (cont.)

- On 28 of May 2013, Nadcao and the National Task Team (NTT) on CBPs made an oral submission to the Portfolio Committee on Justice and Constitutional Development and called upon Parliament to include the regulation of CBPs and CAOs in the Legal Practice Bill- B20-2012 (LPB).
- Nadcao and the NTT saw this exclusion as a major set back to CBPs and CAOs, considering their immense role in providing primary access to justice services and thereby diverting cases from courts and easing their workload.
- The Portfolio Committee acknowledged the crucial work of the CAOs and CBPs. However, the Committee argued that it was not practical to include CBPs in the Bill as it was at a very advanced stage, but that this could be done as an amendment once the Bill had been enacted or through separate new legislation.

Past engagements (cont.)

- In 2013, Nadcao commissioned the Cost Benefit Analysis, which proves beyond reasonable doubt, that the work of the sector should have unfettered access to state funding as a way to scale up efforts to grow the sector and sustain operations.
- Nadcao, in order to address the impasse referred to above, held consultative meetings with paralegals and the DoJ&CD. In addition to this, it lobbied to discuss how to take the interests of CAOs forward.
- The final and joint position of CAOs and paralegals was that Nadcao advocates for separate statute, albeit still within the broader justice system, and for recognition and government support.

Past engagements (cont.)

- On 23 September 2014, the Legal Practice Act came into effect. For the first time in South Africa, national legislation has recognised the paralegal profession.
- Section 34(9) of the Act provides that the Legal Practice Council must, within two years after the commencement of Chapter 2 of the Act, investigate and make recommendations to the Minister on the statutory recognition of paralegals taking into account best international practices, the public interest and the interests of the legal profession, with the view to legislative and other interventions in order to improve access to the legal profession and access to justice generally.

Past engagements (cont.)

- The Act provided for a transitional body called the National Forum tasked to prepare for the establishment of the Legal Practice Council.
- In effect then, there was a 4-year window-period from the establishment of the National Forum (1 Feb 2015) to two years after the establishment of the Legal Practice Council (31 January 2019) to ensure that this Council investigates and makes recommendations on paralegal regulation to the Minister.
- The Legal Practice Council (LPC) only came into existence on 1st November 2018, taking over the regulation of legal practitioners (attorneys and advocates).

Past engagements (cont.)

- The DoJ&CD Deputy Minister, John Jeffrey, at the First National Symposium on the CAO Sector on 24 November 2014 stated that his department, in consultation with Nadcao and ACAOSA, needed to find a way to move faster on the Legal Practice Act.
- October 2015 an extended ACAOSA Council meeting was held.
- The first step was to formulate an ACAOSA policy on regulation that was used to gain wide stakeholder approval and assist those drafting the regulations.
- The ACAOSA Policy was also to dispel much of the fears that private lawyers hold regarding CBPs and CAOs, was a major impediment in the inclusion of CBPs and CAOs in previous versions of the Legal Practice Bill.

Past engagements (cont.)

- January 2016, a Reference Group was formed comprising of ACAOSA National Council members
- ACAOSA and Nadcao, in collaboration with Legal Aid South Africa and Legal Resource developed the first draft bill, which was circulated for comments and consultative meetings held.
- Draft Bill was presented to the DoJ&CD in September 2016. ACAOSA & Nadcao were tasked to develop a Socio-Economic Assessment document, which was submitted to the DoJ&CD in October 2016.
- ACAOSA & Nadcao with key stakeholders met with the DoJ&CD in November 2016. Reference Group formed: ACAOSA, Nadcao, FHR, LRC, Justice College, South African Human Rights Commission, Law Society, DoJ&CD and National

Past engagements (cont.)

- A meeting was held with the DoJ&CD in August 2016, to advocate for the State to support CAOs by covering 60% of their operational costs, as proposed by the Cost Benefit Analysis study that was commissioned by Nadcao and undertaken by HSRC.
- DOJ&CD requested for a concept note for a pilot project that would entail funding a set of CAOs over a specified period of time (3 years).
- In September 2016, ACAOSA and its partners undertook a study visit to Scotland to look into how the CAO sector could be funded.
- In July 2017, Nadcao and ACAOSA appeared before the Justice and Correctional Services Portfolio Committee to report on the Scotland study trip. Legal Aid South Africa (LASA) was identified as the possible conduit.

More recent engagements

- Early 2018, CAOSA was formed and continued to engage with the DoJ &CD, working closely with the Constitutional Development and Public Participation Unit, which was tasked to develop a discussion paper towards providing a comprehensive analysis and recommendations on the possible best models for government support for CAOs in South Africa.
- CAOSA has been advocating for CAO Sector regulation with sustainability as an critical requirement i.e. no legislation should regulate CAOs without a sustainability assurance.
- Engagements led to the development of a pilot project; the Programme for Legal Empowerment and Access to Justice (PLEAJ) as a partnership between CAOSA and the DoJ&CD.

Future initiatives

- The primary purpose of PLEAJ is to develop the capacity of CAOs, and support them to obtain, improve and retain skills, knowledge, processes, services, equipment, infrastructure and other resources needed to help them do their work competently.
- PLEAJ also includes development of regulatory instruments and appropriate funding model for the sustainability of the sector. It is linked to the CAO sector regulation process, emphasising that no legislation should regulate CAOs without a sustainability assurance.
- Provincial consultative meetings planned after the OSF workshop
- CAO-led campaign to raise awareness of the work of the CAOs and accelerate the regulation process

Conclusion

- The work of CAOs has been riddled with hardship and struggle. Over the years they have battled to provide their services with few financial resources, minimal operational capacity and patchy technical assistance.
- The recognition and regulation of the CAO sector continues to be at the heart of CAOSA efforts geared towards the sustainability of CAOs.
- Working with our partners, our primary goal is to support and ensure that the important work that CAOs perform can continue, grow and flourish. We will work to enable professionalization of the sector, technical and educational advancement of CAO practitioners and the sustainability of CAOs, enabling them to overcome the many challenges they face.



THANK YOU!