



**Report on the 4th Instalment of the
Dullah Omar School for Paralegalism
07-12 October 2018**

“Making access to justice real in a Constitutional Democracy”



Organising Partners

The Dullah Omar School was hosted by the Centre for the Advancement of Community Advice Offices of South Africa (CAOSA) in partnership with Black Sash and Social Change Assistance Trust (SCAT).



Funding partners

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Executive Summary

The fourth instalment of the Dullah Omar School (DOS) of Paralegalism was held from 7 - 12 October, 2018. The School was hosted by the Centre for the Advancement of Community Advice Offices of South Africa (CAOSA) in partnership with Black Sash and Social Change Assistance Trust (SCAT). The School ran under the theme: ***Making access to justice real in a Constitutional Democracy.***

The 2018 instalment of the Dullah Omar School happened against the background of increased abuse of political authority, questionable exercise of power, as well as increasing demands for those who hold power to be held accountable. The School also happened at a moment when the country is preparing for its general elections in 2019, which elections should reflect the will of the population, responding to the aspirations of communities who continue to yearn for a better future.

A better future for communities means that the victims of gender-based violence are empowered, that ordinary South Africans can enjoy their socio-economic rights, and can join hands to stop corruption. A better future means that the ongoing poor treatment of domestic workers and farm workers in rural communities ends and their rights are protected.

The DOS was established to provide a learning platform for community-based paralegals in order to cultivate amongst the younger generations the spirit of mobilising and developing community agency. The School aims to produce well trained and informed community paralegals and will entrust them with a clear mission; ***which is, to be the voice of the voiceless, to be advocates for the marginalised, and to educate and mobilise their communities, enabling them to challenge all forms of malpractices and misconduct, including by those who hold public office.***

- The DOS was made possible through funding support from the Charles Steward Mott Foundation and the Open Society Foundation for South Africa.
- A solidarity message from the Dullah Omar family was read out where they congratulated CAOSA and emphasised the need to push for access to justice for the marginalised and to double social activism efforts.
- A total of 14 Speakers and 15 facilitators graced the School. Speakers included Judge President Dustan Mlambo - President of the Gauteng division of the high court, Dr Showers Mawowa - Deputy Director of the Southern Africa liaison office, Professor Ben Cousin - Chair in poverty, land and agrarian studies at the University of the Western Cape, Ms Nina Benjamin – Gender programme coordinator at Labour Research Services, Ms Lynette Maart – National Director of Black Sash, and Mr Langa Mtshali – CAOSA Board member.
- The training streams were attended by **110 (76 female and 34 male)**, paralegals, from all provinces. There were three North West University accredited learning streams, namely: 1) Introductory Short Learning Programme for Paralegals, 2) Advanced Short Learning Programme for Paralegals, and 3) Short Learning Programme on Mediation Skills for Paralegals. There were also two non-accredited streams which focused on 1) Gender Sensitive Leadership and 2) Social Assistance and Social Security. The streams were

hosted with the intention of strengthening capacities of community-based paralegals. The non-accredited streams were facilitated by partner organisations from the sector: **Social Change Assistance Trust (SCAT), Women and the Law (WATLA), Foundation for Human Rights (FHR), Black Sash, Corruption Watch, South African Law Reform Commission**

- The stream for leaders and stalwarts engaged with strategic issues for CAOSA, including in-depth discussions on the governance structure, strategic plan and ways of accelerating the CAO sector regulation process. **Speakers from ACT Ubumbano and Pro Bono were invited to share on their experiences during the sessions.**

1. Message of support from the Dullah Omar Family

“The School symbolises the type of values that brings a sense of humanity and selflessness to society that is sorely needed”

It is with great gratitude and humility that we recognise and acknowledge yet another anniversary of the Dullah Omar School initiative. It is testimony to the sheer commitment and continued social activism of the Centre for the Advancement of Community Advice Offices of South Africa (CAOSA) that we witness another program that we hope will be a catalyst for fundamental transformation and relief for the most marginalised communities in our country.

The School symbolises the type of values that bring a sense of humanity and selflessness to society, which is sorely needed in South Africa today. This will perpetuate itself further as more social activists are produced by virtue of the school’s sterling efforts. It is our sincere hope that all paralegals are given the recognition that they are fully deserving of, as a result of their frontline battle against poverty and desperation.

The theme for this year’s school is “making justice real in a constitutional democracy”. This is very apt as it brings home the notion of fighting for justice in order for human rights **to be** fully expressed in society. It matters little when dire poverty and structural unemployment are features of a society and country that can boast one of the most progressive constitutions in the world. In order for these constitutional provisions to express themselves and firmly manifest successfully in the most marginalised communities, social activism and the quest for justice need to be accelerated.

We therefore salute the efforts of the CAOSA, Black Sash and the cadre of activists who follow in the footsteps of committed, progressive leaders such as Mary Burton, Gaby Shapiro and others. Your efforts remain tremendous inspiration to all of us. Thank you for your tireless efforts and hard work.

Warm regards,

The Omar family

2. Making Justice Real in a Constitutional Democracy: Challenges and Opportunities for CAOs and the CAO sector

“I owe my experience and whatever I have become to the paralegal sector”

In his keynote address, Judge President Mlambo highlighted that the South African Constitution guarantees access to justice, largely focused on court access. However, the Judge bemoaned the fact that accessing the law in South Africa was a big problem as it depended on one having financial resources. He therefore saluted paralegals for their tireless efforts and fight in making justice accessible to the marginalised and vulnerable in society.

There has been too much focus on the courts yet the primary place where the majority of the people need access to justice is the marginalised communities where paralegals and CAOs have a pronounced presence. The unemployed and economically vulnerable have very little access to justice, rendering the court process a pipe dream to them.

There is need to redefine access to justice and CAOs should be at the centre of this access. In the communities the struggle is real. Among other concerns, there are many vulnerable people who have been threatened by banks that want to take people's houses. Community Advice Offices should be key to stopping such unscrupulous practices. Paralegals should be looking at the day to day issues and work at empowerment of communities to demand justice. Whether an ordinary South African is able to access the law, should never depend on his/her financial standing.

Justice Mlambo urged paralegals to make sure that ordinary citizens can access justice. He pointed out three main challenges confronting Community Advice Offices:

- Funding and shrinking budgets. Every day you have to think about where you will get funding from. This is not a sustainable way of supporting the marginalised to access justice.
- Suspicions by the legal profession that believes that CAOs are in competition with them. The contingency fee agreements deter people from seeking justice. We should therefore question whether there can be meaningful access to justice in the context of contingency fees. It is unrealistic to expect people with no money to access justice under this agreement.
- Lack of proper regulatory outlook. This has forced CAO to operate in silos. The proposed merger between Association of Community Advice Offices of South Africa (ACAOSA) and National Alliance for the Development of Community Advice Offices (NADCAO) is a step in the right direction that will support credibility of the structures.

Justice Mlambo also pointed out that although there were challenges, there were also opportunities to take advantage of:

- Regulatory Mechanisms: There is a need to put together a regulatory mechanism for people who are in the sector. This will ensure that there is ownership and confidence with the sector.
- Embrace corporate governance: This will ensure good governance and accountability in the sector, ultimately ensuring that there is credible legal assistance.

- **Growth:** This will ensure that there is credible legal deliverance through evidence and excellent examples from the CAO. These will provide opportunities to look for new funding bases. What models are you bringing forward as a sector?
- Engage forthrightly: with lawyers/law firms and the legal centre. This will dispel the notion of competition. Collaborate with the legal offices, engage them and see how they can fund or support activities of CAO.

Justice Mlambo concluded with the remarks: “I owe my experience on access to justice to paralegals through my part in the Legal Resource Centre. Regard me as one of your own and let’s work together to make this a success”.

3. Experience from a CAO: Access to justice, Role of mediation and the support CAOs

“It is important that the poorest of the poor have access to justice”

Mr Pat Molepo the CEO of the Community Law and Advice Centre shared experiences from a CAO, especially the importance of access to Justice to people at the grassroots.

He highlighted how access to justice was not just about socio-economic issues but also about gender discrimination. A lot of households headed by girls or struggling single mothers were crying out for justice and were being let down by court processes that seemed too expensive.

In addition, there were people who were still living in shacks without access to water and electricity and this was a sad tale in independent South Africa. Children fall into pit toilets because there are no proper sanitary facilities and this has to change.

The issue of land is important to the realisation of socio-economic justice. If not urgently dealt with, it is a time bomb waiting to explode. The ordinary people in the streets do not want to be burdened by the law and its subsections around land and are therefore getting impatient and want action.

Courts are generally a problem for ordinary people because lawyers want to drag things **out** to make money even **in** cases where mediation may be key, such as divorce and violence.

4. The Open Government Partnership: Reflecting on South Africa’s performance and addressing the challenges

“Open Government Partnership should go beyond just ticking boxes”

Dr Showers Mawowa presented on the intergovernmental initiative which is the Open Government Partnership (OGP). The OGP was launched in 2011 to make governments more open, transparent, accountable, participatory and responsive to citizens. Commitments to these principles should be advanced through a national action plan.

OGP started with eight founding members in 2011 and now there are 79 National Governments and 20 Local Governments that have signed up to over 3 100 commitments. The following points were important to note:

- South Africa is committed to the Open Government Partnership and **commitment number five** is about: **Institutionalisation of Community Advice Offices** as part of the wider justice network.
- This commitment number five is about making community advice offices a permanent feature at grassroots level in communities as a means of advancing access to justice.
- The main objective is to contribute to the long-term development and sustainability of the community advice office sector in South Africa.
- The intention of commitment five, is to ensure that community-based paralegals have the requisite skills to advocate access to justice for marginalised and vulnerable citizens. It further seeks to equip community-based paralegals with the knowledge and skills to engage other civic groupings and government so as to advance the constitutional rights of citizens and communities.
- Although the importance of CAOs is recognised, not much has been done because of the absence of a multi-stakeholder forum to monitor the commitments.
- There has not been much civil society engagement and as a result CSO influence is limited.
- There has also been narrow/little intra governmental consultation -e.g. with the Department of Justice on the implementation of commitment Five (Institutionalisation of CAOs).

5. Court-Annexed mediation programme: How CAOs can get involved

“Mediation adopts a flexible approach compared to the rigid and tedious legal processes”

Ms Terry Mpelo made a presentation on behalf of Advocate JB Skosana who is the deputy director general in the Department of justice and Constitutional Development.

A court-annexed mediation programme is a process by which a mediator assists the parties in a legal dispute by: (1) Facilitating discussions between the parties and (2) Assisting them in identifying issues as well as exploring areas of compromise.

The Department of Justice believes in supporting a cost and time effective resolution resolving disputes. This means that every person has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

Mediation is an alternative to resolving disputes and hence the critical role of paralegals and CAOs.

The Court-Annexed Mediation Rules which are implemented in the District and Regional Courts form part of Government's effort to transform civil justice.

The Rules of Voluntary Court-Annexed Mediation (Chapter 2 of the Magistrates' Courts Rules) were approved by the Minister and came into operation on 1 December 2014. The pilot project

sites are in Gauteng and the North-West Province. The pilot project will be rolled out to sites in other provinces, in conjunction with the rationalisation process.

The objective of these Rules is to assist Case-Flow Management in the reduction of disputes appearing before Court and to promote access to justice. The Rules make provision for the referral of disputes for mediation at any stage during civil proceedings, provided that judgment has not been delivered by the Presiding Officer.

Mediation adopts a flexible approach compared to the rigid and tedious legal processes which most often require the services of a lawyer, who will present before court. Disputes are usually resolved in a reconciliatory manner and mediation, therefore, promotes restorative justice.

To assist with the implementation of the Mediation Rules the Minister has appointed an Advisory Committee which will advise the Minister regarding the norms and standards for mediators and for the accreditation of mediators for enlistment to the panel as required by the Mediation Rules.

- There are a number of requirements before paralegals are accredited and these include a para-legal diploma from an accredited institution. Every applicant for accreditation must complete 40 hours of constant training, including a Mock mediation session. The minister can exempt an applicant from any requirement.
- Paralegals as mediators inform parties to the mediation of the objectives of the mediation and where there is agreement, they do a draft settlement agreement if the dispute has been resolved. They should then proceed to engage the courts to make the settlement agreement an order of the court.
- One of the areas of contention was the fact that magistrates did not seem keen on calling paralegals to assist in dealing with backlog even though some of the cases would clearly benefit from mediation.
- The stalwarts were invited to take forward the issue of how paralegals could assist courts to screen cases especially in the backlog and refer some of them to CAOs. The Department of Justice through Advocate Sikhosana was willing to consider piloting this approach.

6. Freedom isn't Free

The documentary: *Freedom Isn't Free* was screened. A part of the documentary interrogates the failure to fulfil the resolutions of the Freedom Charter signed in 1955. It uses archival footage, intercut from that past into the present and provides informative commentary by new and older generations.

The film demonstrates that for the overwhelming majority of South Africans, housed in sprawling shanty-towns, there has been little advance since apartheid ended – neither economically, socially, nor educationally.

One of the interviewees points to the tragic death of Andries Tatane in post-apartheid South Africa. In 2011, Tatane, a 33-year-old man, was shot, beaten and killed by policemen for protesting for water in Ficksburg.

Water is a basic human right enshrined in the Freedom Charter, which states that all shall enjoy equal human rights.

When the interviewees were asked if they thought that the demands of the Freedom Charter were met, some said yes, and some said that there needed to be a new, evolved version of the charter, with adapted language.

7. Freedom and Justice: State Capture/Shadow State, Land issue, Gender

“The Question of Land should be at the centre of paralegal work”

There was a panel discussion on Freedom and Justice: State Capture/Shadow State, the Land issue and Gender.

The panel had three people: Mbongiseni Buthelezi, Research Manager at Public Affairs Research Institute; Ben Cousin Chair in Poverty Land and Agrarian Studies and Senior Professor (PLAAS); Nina Benjamin, Gender Programme Coordinator – Labour Research Services (LRS).

- **State Capture/Shadow Report**

Mbongiseni Buthelezi spoke extensively on the issue of State Capture/Shadow state. He outlined how huge sums of money have been redirected to personal accounts with a complete disregard for good governance. This was coupled with systemic overturning of what good governance should look like. Networks embedded themselves in organisations and they set up a shadow state. The shadow state saw people working within the rules but outside the state, and rules being subverted.

The issue of corruption was an everyday occurrence because people got into business and made money quickly using procurement budgets to create a new economy. The State-Owned Enterprises (SOEs) were at the brink of collapse. It was realised that while corruption was widespread at all levels and undermining development, state capture was a far greater, systemic threat.

While the unequal South African economy needs to be thoroughly transformed, it is important to be wary of the capture of key state institutions that are then used to promote the narrow ambitions of a power elite that is only really interested in controlling access to rents and retaining political power.

- **Land**

Ben Cousin highlighted the importance of placing the Question of Land at the centre of paralegal work. If people are insecure about land, it impacts on their livelihoods. The land question has now exploded because people are growing impatient with the slow pace with which it has been handled. There are four aspects of land reform:

- **Restitution:** restoring land to people
- **Redistribution:** equitable distribution, not only about returning stolen land but equity.

- **Tenure/rights:** dealing with the issue of security over rights. Most black people have unsecured rights, they are in informal settlements and the issue is how to assist them to secure their rights.
- **Agrarian reform:** comprehensive and effective land reform that reduces poverty and supports job creation. Such reform is necessarily pro-poor and focused on smallholder farmers and concentrates on reducing poverty and inequality in both rural and urban areas of South Africa.

The challenge with the current approach to land is that it is slow-paced and has only resulted in the transfer of around 9 percent of commercial farmland to black South Africans in 24 years, falling short of the interim target of 30 percent by 2014. This is problematic in a historical context in which Black South Africans suffered large-scale dispossession over centuries at the hands of the privileged white minority. At least 3.5 million people were forcibly removed from their land between 1948 and 1990.

- **Gender**

Nina Benjamin outlined how gender inequality is a barrier to social justice in all communities. It is the most serious and pervasive form of discrimination, violation of human rights and hindrance to social and economic development in the world. Gender inequality is a key driver of poor standards of living and a fundamental denial of women's rights. While gender inequality affects everyone, it is women and girls who bear the brunt of this form of discrimination.

Inequality in power relations underpins most struggles. How the unequal power relations are kept in place and most often violently is a major concern. For instance, femicide, killing a woman just because she is a woman. The essence of state capture is the silence that is imposed upon us. Sexual harassment is a tool that is used to control and maintain the silence.

Young women are increasingly concerned by the levels of violence. They have realised that it cannot be business as usual. Women have questioned the fact that perpetrators seem to be untouchable. They have challenged and questioned the culture of accepting. Nina shared lessons from key movements and forms of resistance:

- **#TotalShutdown:** Women across all age groups in South Africa joined together and marched against the unprecedented rates of violence and femicide. The protest was about voicing their anger and speaking about gender-based violence. "My body not your crime scene" was used throughout the campaign.
- **#Metoo:** The global campaign against sexual violence against women and girls. It showed a sense of community. It was an opportunity to voice out rights and denounce violence of any shape or form.

8. Learning Streams

The Dullah Omar School offered accredited and non-accredited learning streams. The training streams were attended by 110 paralegals from all provinces. The streams were hosted with

the intention of strengthening capacities of community-based paralegals. The non-accredited streams were facilitated by partner organisations from the sector.

Stalwarts and leaders engaged on strategic issues for CAOSA, including in-depth discussions on the governance structure, strategic plan and ways of accelerating the CAO sector regulation process.

Profile of participants

The training streams were attended by 110 (76 female and 34 male) paralegals from all provinces. The Accredited learning streams were attended by 60 participants with 63 in the Non-accredited learning streams.

8.1. Accredited Sessions

North West University, Faculty of Law through the Law Clinic offered three accredited courses. The Law Clinic is involved in a number of projects concerning free legal services, community outreach, and capacity building programmes, as well as advisory services. The facilitators for the accredited courses were Mr Schalk Meyer, Ms Chrisna Landsberg and Ms Boipelo Mosepele. The accredited courses were:

- Introductory Short Learning Programme for Paralegals
- Advanced Short Learning Programme for Paralegals,
- Short Learning Programme on Mediation Skills for Paralegals

Phase 1: Introductory Short- Learning Programme for Paralegals, 30 people participated in the course.

Course Content

1. Administration 2. Consultation skills 3. Ethics 4. Administration of Estates 5. Constitutional Law and Human-Rights 6. Socio-economic related matters 7. Civil matters and Procedure 8. Prescription 9. Family related matters 10. Consumer related matters 11. Law of Contract

Phase 2: Advanced Short Learning Programme for Paralegals. This was a continuation of the Introductory Short-learning programme offered to Community Advice Officers.

Course Content

1. Customary law^[SEP] 2. Labour law^[SEP] 3. Children's Act^[SEP] 4. Land matters^[SEP] 5. Alternative dispute resolution

Phase 3: Short Learning Programme on Mediation Skills for Paralegals

Course Content

Module 1: Mediation Skills 1.1 What is mediation? 1.2 The advantage of mediation vs litigation 1.3 mediation strategies 1.4 Mediation intake procedure 1.5 First mediation Session 1.6 Setting up agenda 1.7 Memorandum of Understanding

Module 2: Mediation of family matters 2.1. Divorce trends 2.2. Effects of divorce/separation on the parties and children 2.3. Emotional stages in the divorce process 2.4 Children’s involvement in the mediation process 2.5 Best interest of the child standard 2.6 Divorce mediation process 2.7 The unmarried father and mediation

8.2. Non-accredited Sessions

8.2.1. Gender Sensitive Leadership:

Course Content
<ol style="list-style-type: none"> 1. The constitution and bill of rights of women and children 2. Your Rights and Responsibilities 3. Law and legal processes 4. Court Preparation 5. Mediation and Counselling

Facilitators for this stream were Ms Collen Alexander-Julies and Mr Vuyo Msizi from SCAT together with Ms Palesa Nhlapo, Advocate Maite Modiba and Ms Rita Tladi from Women and the Law (WATLA). A total of 21 (16 female and 5 male) CAO participated in this learning stream. Participants were exposed to the following concepts:

- Emotional blind Spots - part of the biography, place, history sessions
- Historical privilege and woundedness- as part of the biography, place, history session
- Becoming congruent - the relationship between who you are and what you do
- Leadership practice - the “WHY” as per Simon Sinek or the reason they do what they do as a way to frame and communicate/share vision
- Thinking dialogue done as a demonstration
- Gender-based violence paralegal training

The session started on a high note, with participants suggesting that GBV awareness programs need to acknowledge that men can be victims as well. The facilitator allowed the session to engage on the matter and the point was made that although men can be victims the focus will be on women and girls as they are the ones who are mostly affected. The session used practices and exercises including vocal toning, posture and body work, journaling, giving and appreciating feedback.

The following was discussed during the session:

- **The Promotion of Equality and the Prevention of Unfair Discrimination Act 4 2000:** This law prevents individuals, companies, organisations and government departments from discriminating against anyone on the grounds of race, gender, disability, sexual orientation or religion/belief.
- **Domestic Violence Act 116 of 1998:** Domestic violence refers to violence which is carried out by partners or family members. Domestic Violence can include Intimate Partner Violence, but also encompasses violence against children or other family members.

- **Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007:** This Act has been operational since 16 December 2007 and affects the punishment of sexual crimes committed after this date. The Act replaces some common law provisions on sexual offences and some sections of the old law, the Sexual Offences Act 23 of 1957. The Act also creates new sexual crimes.
- **Equality Courts:** These are specialised courts which are designated to hear matters relating to unfair discrimination, hate speech and harassment. Some of these issues may be excluded if they are governed by other laws such as the labour law or criminal statutes

Court Preparations

As part of the court preparation sessions different roles and responsibilities were discussed:

- **Magistrate/Judge:** A public official who presides over a case and resolves disputes by deciding on matters and issuing judgments.
- **Assessor:** A person who assists the magistrate/judge in making a decision.
- **Attorney:** a lawyer who is appointed to act for another in business or legal matters.
- **Accused:** The person who is accused of committing a crime. He has a duty to tell the magistrate/judge his version of what transpired in the matter, and he may have legal representation to assist him in telling his side of the story (a defence lawyer).
- **Prosecutor:** A prosecutor is a court official who works for the state. He has a duty to prove that the accused person is guilty of the crime that he is being accused of.
- **Registrar:** An officer of the court office or “registry” who receives documents for filing with the court and who has authority to certify or confirm decisions on behalf of the court.
- **Court orderly/court clerk:** This person ensures that court processes are followed and that there is a uniform order in the court room.
- **Interpreter:** This is the person who explains to you what is being said in court in a language that you understand (your home language).
- **Investigating officer:** An investigating officer investigates the crime that the accused is being accused of, and takes statements from witness. He gathers evidence and presents it to the court.
- **Intermediary:** The person who works in the special court room, and asks a child questions in a way that the child will be able to understand and respond accordingly.
- **Stenographer:** The stenographer sits in front of the magistrate/judge and ensures that everything being said/done in court is being recorded on a tape.
- **Witness:** A person who sees an event, typically a crime or accident, take place and may provide evidence in the court room.

Criminal Process:

- The crime must first be reported to the police station.
- The police open a docket thereafter and the crime is investigated by the investigating officer.
- The docket is sent to Court and the prosecutor must make a decision as to whether further investigation is necessary.
- The National Prosecuting Authority (NPA) decides whether to prosecute or not.
- If the NPA decides not to prosecute, it is most likely because the case is not strong enough, for example if there is too little evidence available.
- If the NPA decides that the accused will be prosecuted, the case is sent to Court for indictment.

- The prosecutor may decide on diversion of the case. Diversion is a system for first-time offenders charged with petty crimes. They are given a chance to do community service, pay for damages resulting from the crime, undergo treatment for alcohol or drug problems, and/or counselling for antisocial or mentally unstable behaviour.
- When the case is heard in Court, the accused may apply to be released on bail.
- The effect of bail is that an accused who is in custody is released from custody upon payment of the amount of money determined for his or her bail or the furnishing of a guarantee to pay it. He/she must then appear at the place and on the date and at the stipulated time determined for his or her trial, or to which the proceedings relating to the offense of which the accused is released on bail.
- At the start of a trial, the prosecutor states the charges laid against the accused.
- The accused then pleads to the charge, which might be guilty or not guilty.
- If the accused pleads not guilty, the case must proceed to trial. The matter may be postponed to obtain further evidence or to get a lawyer for the accused.
- On the day of the trial the prosecutor will first call witnesses to testify so that it can be proved that the accused is guilty beyond reasonable doubt.
- Thereafter the accused or his/her attorney will also call witnesses to testify or produce evidence. After both sides have been heard, the presiding officer must make a decision as to whether the accused is guilty or not. If the accused is found guilty, the accused will be sentenced by the presiding officer.
- The Court may consider other sentencing options besides imprisonment or fines. If sentenced to prison, the accused may be released on parole under certain circumstances.

Mediation and counselling

Participants discussed Court Annex mediation that was introduced in December 2014. The Court Annex Mediation was introduced as an alternative to formal litigation in selected magistrates' courts.

Mediation is the process whereby a third party, namely a mediator, assists the parties in identifying issues, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute. This mediation process applies to parties in both actual and potential litigation. The main objectives of this mediation process is to facilitate discussions between the parties and to preserve the relationships between the parties that may become strained or destroyed through the adversarial nature of litigation.

The following Step-by-step practice note guideline were discussed:

Step 1: When to refer a matter to mediation

A matter can be referred to mediation before or after litigation but must be done before judgment is handed down. If the trial has commenced the parties must first obtain consent from the court to proceed with mediation. There is also a duty on judicial officers to inquire into the possibility of mediation and provide the parties the opportunity to refer the dispute to mediation.

Step 2: How to refer

Parties desiring to refer the matter to mediation, both prior to the commencement of litigation and during the commencement of litigation, must make a request in writing to the clerk of the court. The clerk of the court must inform all parties to the dispute that mediation is being sought and must call on all the parties to attend a conference within ten days, for the purpose of determining whether all or some of the parties agree to refer the dispute to mediation.

Step 3: Giving notice

Where the parties in the case of an intended action, have agreed to submit their dispute to mediation, one of the parties must notify the clerk of the court by means of the prescribed notice. Where the action has already been instituted, one of the parties must notify the court concerned through the prescribed notice. In an action that has already been instituted, the clerk will file the notice under the number assigned to the case in question and submit it to the court where the case originated and request the court to adjourn the dispute for mediation proceedings. A request for mediation can be considered in chambers, however, this is at the discretion of the adjudicator or magistrate.

Step 4: Appointment of mediator

The clerk, along with the parties must appoint a mediator. If consensus cannot be reached, the clerk must appoint the mediator. The clerk will then also set a time, date and venue for the mediation and assist the parties to conclude a written mediation agreement, which must be signed by the parties. The party claiming relief must lodge a statement of claim with the clerk within ten days of signing the agreement. The party against whom relief is being claimed must lodge a statement of defence with the clerk. In the event that litigation has already commenced, the parties are to provide the mediator with copies of the summons and plea, or statement of defence where no plea is filed in the case of action proceedings. In application proceedings the parties are to lodge copies of the founding, answering and replying affidavits, or statement of defence if no answering affidavit has been filed.

Step 5: Filing of documents

The parties are entitled to file, with the clerk of the court, any document or evidential material on which the action is based, or which the parties intend to use at mediation proceedings at least seven days before the mediation proceedings. The parties may also file or supplement these documents during the mediation proceedings.

Step 6: Representation at mediation

The parties have a right to be represented at mediation proceedings, however, this is not mandatory.

Step 7A: Successful mediation

Should the parties reach agreement as a result of the mediation, the mediator must assist the parties to draft the settlement agreement, which must then be transmitted by the mediator to the clerk. On receipt of the agreement, the clerk must place the agreement before a magistrate in chambers for noting that the dispute has been resolved or to make the agreement an order of court, by the agreement of the parties.

Step 7B: Unsuccessful mediation

If settlement is not reached in mediation between the parties, the clerk must, on receipt of the report from the mediator, file the report to enable litigation to continue, from which all suspended time periods will continue to run.

Mediation is quicker than the usual route of full blown litigation and is more cost-effective, amicable and may prove more successful for both parties involved. Attorneys, litigants and parties to a dispute are encouraged to entertain the mediation route and settle their disputes cordially outside court.

8.2.2. Social Assistance and Social Security

Course Content	
Social Security Training	Corruption and State Capture

<ul style="list-style-type: none"> • Your right to social assistance • The Social Assistance context • What different grants are available? • Understanding of the application process • Using the Social Assistance Reference Guide for Paralegals as a tool • Understanding the different Child Grants • Understanding of the different Adult Grants • The Social Assistance appeals process • The role of Advocacy in the Social Assistance Context 	<ul style="list-style-type: none"> • What is corruption • What does Corruption Watch do?. • Understanding Corruption in South Africa - statistics on corruption across provinces and the country • Corruption and the law • How to identify a corruption problem • What you can do about corruption • 10 Steps to building a campaign against corruption in your area.
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Black Sash and Corruption Watch facilitated this stream. Facilitators included Ms Mandy Moussouris, the Education, Training and Research Manager and Kgothatso Sibanda the National Helpline Paralegal, both from Black Sash.

The Social Security Training and Corruption and State Capture Workshop sought to provide paralegals with the necessary information and tools to empower them to assist their communities to access their social grants. It also provided the paralegals with an overview of state capture, and an understanding of what corruption is, the legal framework and how to deal with issues of corruption.

Paralegals felt they had gained much deeper understanding of social security and would be able to assist people in their area to access grants, follow appeal processes if they experienced problems and participate in advocacy campaigns around social security issues.

Paralegals found the workshop interesting and felt they were competent to follow-up on issues of corruption in their communities. The issue of the closure of pay points as well as a universal income grant were flagged as areas for advocacy

Way forward

The following two suggestions were provided as worthy pursuing further:

- Paralegals can contact Black Sash Regional Offices and request further training and information sessions.
- Paralegals will contact Corruption Watch regarding corruption issues in their communities

a. Participants feedback on learning streams

The most commonly mentioned areas of intervention were:

- Crime against girls and women
- Postponement of cases due to lack of preparation of respondents
- Evictions of farm labourers and illegal labour practice
- Mobilise communities to participate in public participation hearings
- Domestic violence and Gender based violence
- Divorce and the divorce processes
- Administration of deceased estate

- Access to social grants (documentation ID, birth registration etc.)
- Immigrants and the processes of documentation for children to attend school

Feedback on the DOS

- Need to decentralise the DOS to provincial level so as to have more COA benefiting from the courses
- The merger between ACAOSA and NADCAO was applauded because it will provide a central place for support. Also, this was viewed as an opportunity to improve the general sector and cultivate a sense of ownership
- Follow-up post the DOS to assess how information from these sessions is used in the different offices
- Accredited courses were viewed as a positive step in boosting confidence amongst the COA
- Need to start generating information on how communities' lives are changing due to the work done by the advice offices
- Appreciation of the peer to peer learning amongst and across generations and geographical settings which enables interactions within and outside the sessions.

2. Stalwarts' reflection on proposed CAOSA governance structure

“CAOSA intends to develop, strengthen and grow the CAO sector into a sustainable component of the access to justice landscape”.

The stalwarts had a session focused on the proposed CAOSA governance structure, and the strategic plan. Provincial action plans dealt with a number of issues pertinent to the formation of the new entity for paralegals in the broader Community Advice Offices sector, which is made up mainly of paralegals providing free advice to the poor in Community Advice Offices, organisations providing legal training to paralegals, advocacy organisations working with community advice office, and grant-making organisations to community advice offices.

Discussions focused on the need to ensure that paralegals are given the voice and platform to participate meaningfully in decision-making and implementation of strategic goals in order to shape the sector. It was also important to prioritise professionalization and sustainability goals of the sector. The following was also discussed:

- The governance structure adopted is geared towards building a local, provincial and national membership-based organisation made up of Community Advice Offices.
- CAOSA will be launched during the second quarter of 2019 as a Non-Profit Company, made up of eighteen National Council members drawn from two representatives (Chairperson and Secretary) sent by nine Provincial Councils, a Board of Directors of up to 10 members including the Executive Director, and a Secretariat headed by the Executive Director.
- Community Advice Offices will apply for membership to the Provincial Councils in their provinces and pay an annual subscription fee (which shall from time to time be determined by the National Council).

- The subscription fees will be used towards the costs of running the Provincial and National Councils. The Provincial Councils will be the highest decision-making body in the provinces.
- The National Council will be the highest decision-making body of CAOSA and will appoint up to 10 members of a Board of Directors including the Executive Director, five of whom may be chosen from amongst members of the National Council.
- The Board of Directors will play an oversight role, will meet at least three times a year and will set up committees to focus on various aspects of the strategic plan of CAOSA.
- One such committee will be the Programme Advisory Committee into which various stakeholders (organisations providing legal training to paralegals, advocacy organisations working with community advice offices, and grant-making organisations to community advice offices) will be invited from time to time to participate.
- A key consideration when constituting the Board of Directors will be to always ensure that there is a full complement of skills sets required to achieve the goals set out in the Strategic Plan document.
- Among the top priorities over the period of October to April will be for Community Advice Offices in the nine provinces to convene Provincial Councils to adopt a National Strategic Plan document and elect new leaders from which a Chairperson and a Secretary will represent the province in the National Council. Also, the National Council must convene to adopt a Strategic Plan document and elect new members.
- At an administrative level, the formal registration of CAOSA as a Non-Profit Company must be finalised before the end of 2018 so as to speed up the transition arrangements leading up to the formal launch of CAOSA and beyond.
- Preparations for the 2019 Dullah Omar School for Paralegalism must begin before the end of 2018 in order to provide for enough time to improve on the success of the 2018 school as well as to address pertinent issues raised by Community Advice Offices for consideration by the leadership.

3. Graduation

“The School serves to reinforce a value system that is based on selflessness, service and restoring dignity to the most marginalised communities”.

The graduation session was held on the 12th of October 2018. The graduation ceremony was a met with celebration, fun fair and great sense of achievement by the participants. As part of graduation proceedings, Mr. Seth Tladi, Social change assistance Trust Programmes Manager provided a recap of the week. Tladi emphasised the importance of access to justice as a right enshrined in the constitution. He reiterated the role of community-based Paralegalism, and the invaluable role paralegals play in ensuring that even the most marginalised are given a sense of hope. Paralegals have, therefore, become the voice of the voiceless and advocates for the marginalised, as they educate and mobilise their communities, enabling them to challenge all forms of malpractices and misconduct, including by those who hold public office.

Stalwarts were invited to take forward the issue of how paralegals could be better resourced and better supported. There was a call for deliberate efforts to identify a target group to support the CAOs, particularly law firms and coporates.

Nkosikhulule Xhawulengweni Nyembezi shared the keynote address for the graduation:

a. Mobilise citizens to use their right/power to vote in 2019 to bring about the desired/aspired change

“All paralegals present here today are people of integrity, you give being a paralegal a good name”

The closing key note address was given by Nkosikhulule Xhawulengweni Nyembezi, a policy analyst and human rights activist. The following were the key points of the address:

A paralegal;

- belongs to a family of advocates (or *Advocatus* in Latin) which means "Master of defending another" and was originally the defender of individuals or communities against the powerful authorities in society, as well as the mover of a particular cause or policy for the betterment of others.
- stands in sharp contrast to a mercenary - who is a professional soldier hired to serve in a foreign army and who is primarily concerned with making money at the expense of ethics.
- is a master of defending others and a master of many things that embody constitutional democracy in South Africa based on the rule of law.

In the context of evolving challenges facing the community advice office sector, paralegals have made remarkable progress over the years to become a scholarly, professional, and human rights driven sector in the best possible way.

Paralegals also have a role as election observers in the context of the upcoming 2019 provincial and national elections and beyond - which should undoubtedly make paralegals true human rights activists and heroes.

The following points were also reiterated:

- Crucially for free and fair elections, being able to speak out freely is closely connected to the right to vote and to stand for public office. That right lay at the core of the struggle for democracy in the country.
- An election without as much freedom to speak as is constitutionally permissible would be stunted and inefficient. For, the right to freedom of expression is one of a "web of mutually supporting rights" the Constitution affords.
- It is imperative that ways are found to involve paralegals in election observation; in voter and civic education that precedes elections, in monitoring compliance with the electoral code of conduct during election campaigns, and in observing voting and counting of votes in all voting stations. There should be mobilisation for accreditation of paralegals as election observers.
- The lack of evidence of reporting by community members to the police of those suspected of violating the Electoral Code of Conduct, and of police investigations and prosecutions that result in conviction and imposition of harsh sentences to perpetrators is alarming,

given the damage caused by attacks on election candidates. There is need for political party supported efforts to build peace and social cohesion in various communities.

- The lack of a convincing record of individuals and political parties found guilty of violating the Electoral Code of Conduct being punished, including being disqualified from contesting elections is alarming.
- The ranks of election observers should be swelled by ensuring that community advice offices and paralegals are trained and accredited by the Electoral Commission.

Mr Albert Makwela from CAOSA provided a word of appreciation to the different stakeholders in the meeting and acknowledged that there is a lot of work ahead. However, all hope is not lost as the community-based paralegals have selflessly dedicated themselves to ensuring access to justice for the marginalised communities they serve.

4. Recommendations

The following are some of the key recommendations from the School:

- **Screening cases:** The stalwarts were invited to take forward the issue of how paralegals could assist courts to screen cases especially in the backlog and refer some of them to CAOs. The Department of Justice through Advocate Skosana was willing to consider piloting this approach.
- **Embrace regulation:** it will ensure that there is confidence with the sector.
- **Institute Corporate governance:** this will ensure accountability in the sector and ensure that there is credible legal assistance.
- **Growth:** Look for new funding bases. There was a call for deliberate efforts to identify a new refreshing target audience to support the CAOs.
- **Engage forthrightly:** with lawyers/law firms: This will dispel the notion of competition.
- **Open Government Partnership:** There should be a stronger push for the implementation of commitment Five (Institutionalisation of CAOs).
- **Land:** The question of land should be at the centre of paralegal work. If people are insecure about land, it impacts on their livelihoods.
- **Wary of capture:** While the unequal South African economy needs to be thoroughly transformed, it is important to be wary of the capture of key state institutions that are then used to promote the narrow ambitions of a power elite that is only really interested in controlling access to rents and retaining political power.
- **Role in elections:** The ranks of election observers should be swelled by ensuring that community advice offices and paralegals are trained and accredited by the Electoral Commission.
- **CAOSA launch:** CAOSA will be launched during the second quarter of 2019 as a Non-Profit Company, made up of eighteen National Council members drawn from two representatives (Chairperson and Secretary) sent by nine Provincial Councils, a Board of Directors of up to 10 members including the Executive Director. The Secretariat will be headed by the Executive Director.
- **Decision-making:** The National Council will be the highest decision-making body of CAOSA and will appoint up to 10 members of a Board of Directors including the Executive Director, five of whom may be chosen from amongst members of the National Council.

5. Conclusion

Well trained paralegals working in Community Advice Offices and who understand the rights of all people are an essential service to all communities. A strong and well capacitated civil society structure is required to ensure access to justice. It is therefore important to continue to fight so that CAOs receive adequate funding, organisational development and professional support. The Dullah Omar School will continue to support the training of informed paralegals and will entrust them with a clear mission; ***which is to be the voice of the voiceless, to be advocates for the marginalised, to educate and mobilise their communities.*** This way they will be able to challenge all forms of malpractice and misconduct, by those who hold public office.

6. Annexures

Annexure 1: Centre for the Advancement of Community Advice Offices of South Africa (CAOSA)

CAOSA is the only national organisation that supports the delivery of legal and related services through CAOs in locations where poor, marginalised and vulnerable people are based, in languages they speak and in a meaningful, accessible way, so that they can realise their constitutional rights.

Vision: Marginalised and vulnerable communities and individuals have easy access to justice, social services and legal support to effectively advance their human rights in South Africa.

Mission: CAOSA is a non-partisan organisation that coordinates and facilitates the provision of free, accessible legal and social services to marginalised and vulnerable communities and individuals, by supporting and developing CAOs.

Values: CAOSA is committed to, and adheres to the following values:

- Respect and integrity
- Accountability and transparency
- Fairness, equity, justice and a commitment to a human rights framework
- Compassion and empathy
- Participative engagement and collaboration
- Professionalism, rigour and excellence

CAOSA strategic goals: The strategic goals that CAOSA aims to achieve, are to:

1. Build and give voice to the CAO sector, ensuring that it provides a high standard of legal and related services to marginalised, diverse and vulnerable groups and individuals.
2. Build the capacity of CAO practitioners to enable them to provide quality access to justice to marginalised, diverse and vulnerable groups and individuals.
3. Mobilise resources for CAOs in order to build a sustainable CAO sector.
4. Ensure that CAOSA is an effective and sustainable organisation that builds and supports the CAO sector.

Main activities and focus areas: CAOSA will focus its work on these core activities:

- Building information about the sector, using the database to strengthen and to advocate for the sector.
- Accreditation and the maintenance of standards of excellence and integrity of CAOs.
- Building partnerships and networks to support the sector, nationally, on the African continent and globally.
- Undertaking research designed to ensure active participation by citizenry and to improve their socio-economic circumstances.
- Building capacity for the CAO sector, and for all CAO practitioners.
- Enabling networks, collaborations and partnerships with referral agencies for clients
- Facilitating and building local fundraising capacity and resource mobilisation assistance for CAO offices.
- Facilitating and strengthening the provincial voice of the CAO sector.
- Providing enabling strategies and work with CAOs to attract the youth.
- Leading resource mobilisation strategy and planning for the sector.
- Engaging the State for the support and recognition of the sector

- Leading advocacy activities for the regulation of the sector.

Facilitating and Supporting Organisations

Centre for the Advancement of Community Advice Offices of South Africa (CAOSA)

108 Fox Street
2nd Floor, Metropolitan Building
Marshalltown, Johannesburg, 2001, South Africa

Social Change Assistance Trust

Elta House, 3 Caledonian Road Mowbray,
Cape Town, 7720, South Africa
Tel: +27 21 418 2575 • Fax: +27 21 418 6850
info@scat.org.za • www.scat.org.za

Black Sash

Elta House, 3 Caledonian Road Mowbray,
Cape Town, 7720, South Africa
Tel: +27 21 686 6952 • Fax: +27 21 686 7168