



Dullah Omar Summer School on Para-legalism 2016
PUTTING COMMUNITIES AT THE CENTRE OF LEGAL
EMPOWERMENT



THE DULLAH OMAR SCHOOL
ACCESS TO JUSTICE

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Stream Workshops Report

Stream 2 – Advice Giving

Conflict Resolution & Mediation

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The workshop started with the facilitator defining what 'conflict' means:

- When two people disagree.
- Violent/non-violent struggle towards or leading to change.
- Two or more parties become involved in a dispute over the views, needs and interests.

Conflict resolution refers to the methods and processes involved in facilitating the peaceful ending of conflict. In a mediation process a neutral individual is appointed to resolve a matter between two parties. In this case, the solution must come from both parties; the mediator should not impose any views.

The most common causes of conflict are:

- *Resources*
These conflicts are easy to spot, they are conflicts over visible things, e.g. two people are fighting over a chair. These conflicts can sometimes be easy to solve.
- *Basic Human Needs*
This usually involves needs such as friendship, belonging, power and safety. These conflicts are much harder to spot. Many times a need is the reasons behind a resource conflict.
- *Conflict as a Result of our Socialisation*

A conflict as a result of our socialisation can involve our:

- **Values** - These are our beliefs. A value conflict is very difficult to solve.
Examples of value conflicts:
 - A woman's place is in the home and not in the workplace.
 - The legal drinking age should be lowered to 16
- **Perception** – This is how we see something. A perception conflict occurs because we think others see/perceive exactly what we see, but we all have our own filters and see things in different ways.
Remember: There are always two sides to a story, if you want to resolve a conflict find out what the other person's perceptions are of the conflict.
- **Assumptions.** If you **assume** you make an **ass** out of **u** and **me**. An assumption is a statement not based on fact but on perception.
Example: He won't be a good basketball player because he is too short.

Types of Conflict

- INTRAPERSONAL – occurs inside ourselves
Example: Should or shouldn't I attend the committee meeting?
- INTERPERSONAL – between two people
Example: two committee members have a conflict
- INTRAGROUP – between people in a group
Example: a conflict between members of the committee
- INTERGROUP – between two or more groups
Example: A soccer match

We all respond to conflict differently depending on the situation. These can be our conflict style:

- Fight (initial)
- Flight (initial)
- Avoidance
- Competing
- Accommodation
- Compromise
- Collaboration

Fight - I win – You lose – My way

- My needs, feelings and ideas are more important than yours.
- I say what I like in the way I choose.
- I may use emotional and/or physical force or other means to get my way.
- It does not really matter to me if I hurt you physically or emotionally in the process.
- Getting my way is important and I usually get what I want.
- I enjoy confrontation and I get drawn to conflict, it gives me a high.

Flight - You win - I lose - Your way

- My needs, feelings and ideas are less important or seem to have less value than yours.
- I do not know how to express what I need, feel and think.
- I do not want to hurt others or risk being hurt myself.
- I will let you have your say.
- I do not feel comfortable with conflict.
- I do not feel safe discussing things with you.

Avoidance - Lose-Lose

- Deliberately ignoring or withdrawing from conflict.
- Give up personal goals.
- Display passive behaviour creating a lose-lose situation.
 - Advantage – may help to maintain relationships that would be hurt by conflict resolution
 - Disadvantage – conflict remains unresolved, overuse of this strategy leads to people walking over you

Competing - Win-Lose

- I insist on my view prevailing.
- I control the outcome, I am highly goal orientated.
- Discourages disagreements.

- Relationships take a lower priority.
- I do not hesitate to use aggressive behaviour.
- Can be threatening and intimidating.
 - Advantage – if decision is correct, although someone ‘loses’, a better decision without compromise can result
 - Disadvantage – may breed hostility and resentment toward the person using this style

Accommodation - Win-Lose

- Emphasis is on human relationships.
- Ignores own goals by giving in to others situation.
 - Advantage – maintains the relationship
 - Disadvantage – may not be productive and the individual could be taken advantage of.

Compromise - Win-Lose, Lose-Lose

- Concern is for goals and relationships.
- Willing to sacrifice some of their goals while persuading the other to give up part of theirs, meet you halfway.
- Compromise is assertive and cooperative.
 - Advantage – relationships are maintained and conflicts removed
 - Disadvantage – may create less than ideal outcome and game playing can result

Collaboration - Win – Win solution

- Assert your views while also inviting others’ views.
- Welcomes differences.
- Values goals and relationships.
- Search for mutual agreement.
- Conflicts can be solved by finding solutions agreeable to all.
 - Advantage – both sides get what they want and negative feelings are eliminated
 - Disadvantage – takes a great deal of time and effort

Escalation & de-escalation

We generally tend to find that conflict situations will improve or get worse in the way we deal with them. A conflict is more likely to get worse (escalate) when:

- Other parties involve themselves in the situation and choose sides;
- One or all parties feel threatened by the other;
- There is a rise on frustration or anger;
- The parties do not possess the necessary skills to resolve the conflict.

On the other hand, the conflict situation will get better (de-escalate) when:

- The parties are able to concentrate on the problem rather than on each other;
- The parties have a good track record of resolving their disputes, and have co-operated well with each other;
- Each party’s needs are clearly expressed and discussed;
- The parties possess the necessary skills needed to resolve the conflict

Communication skills

One of the deepest needs of all human beings is to feel understood and be accepted by others. For this, we need communication skills. Communication skills are acquired skills. Good communication starts with an understanding that no one is always effective at listening to others. Some communication principles:

- Caring what others are saying is the key to good communication.
- There is always new information to learn from communication.
- Effective communication requires a joint effort between speaker and listener.
- Tolerance of people's difficulty in communicating (including your own) is essential.
- The best communication occurs when people are genuine and natural.

Breakdowns to communication

An important skill in effective communication is active listening. On average, 40% of our time in the communication process is spent listening to people. Most of the time it is spent hearing what people are saying, and not actually *listening* to them, this can cause communication breakdown. There are a few types of breakdowns:

- Ordering
- Threats
- Insulting
- Diverting
- Advising
- Logical arguments
- Questioning

Active listening

Active listening is the ability to pick up, define and respond accurately to the feelings expressed by the other person; it is learning to really listen without butting in or projecting one's own opinion or ego. Some guidelines to active listening are:

- **EMPATHY**
Always try and put yourself in the other person's shoes, it will help you understand how they are feeling.
Emotions play an important part in conflict, so if you are able to understand their emotions it will help you solve your conflict.
- **BODY LANGUAGE**
Always show that you are interested and that you understand by using good body language such as: eye contact, the right tone of voice and by not fidgeting.

Techniques for Active Listening

- **ENCOURAGE:** Show the speaker that you are interested to obtain more information.
Can you tell more?
- **CLARIFY:** To improve the information you received and obtain more information.
How long has this been happening?
How long did she react to the situation?

- **RESTATE:** Restating is when you accurately reflect the content (facts and ideas) of what has just been said in your own words.
From your point of view...
So what you are telling me is...
- **REFLECT:** Reflecting is when you accurately reflect the emotions and feelings behind what has just been said in your own words.
You sound very happy over what has just happened.
You sound like you are pretty relieved that it is over.
- **SUMMARISE:** By bringing all the information both facts & figures together, this ensures that the other person knows that you have all the correct information.
So A, B & C happened, could you tell me if this is correct?
- **VALIDATE:** Validating is simply acknowledging the person.
Thank you for sharing this with me

The facilitator used different methods of teaching, such as ice breakers, group discussion, PowerPoint, storytelling and role plays, where the participants were asked to play the role of a mediator. There was also a dialogue exercise where participants were given a maintenance case to solve. In this case a mother took the father of her baby to court for maintenance, while the father maintained that he is not father of the baby. The magistrate then ordered that a paternity and maternity test be administered. It turned out that both parents were not the biological parents of the baby. The findings of the court determined that, just after the birth of the child, the baby was swapped by mistake. The magistrate insisted that the mother keeps the baby for the interest of the child. The participants were asked to mediate in this case.

The highlight of the workshop was when the facilitator gave real life examples of cases he has been involved in as an attorney. He told stories of divorce cases where some participants could really relate to. The example of the swapped baby from hospital was the most sensitive one, which got everyone talking.

Introduction to Workers Rights

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Course Objectives

The objectives of the course were to:

- 1) Deepen participants' understanding of worker rights through an introduction to the labour law framework
- 2) Enhance their skills to identify labour instruments specific to different categories of workers, and
- 3) Familiarise participants with various labour rights resources.

Course Structure

The course was structured along the following themes:

- 1) Current experience with labour cases – to test participants' existing knowledge and areas of difficulty
- 2) Summary overview of the labour law framework – to deepen understanding of how different laws affect worker rights
- 3) Case studies – to further develop participants' understanding of specific legal instruments
- 4) How to read sectoral determinations – to further develop participants' skills to read and navigate determinations and agreements
- 5) Finding workers' specific rights – introducing participants to various worker rights resources

In the first activity, participants in plenary shared the kinds of labour cases they deal with in their respective advice offices. These included constructive dismissal and dismissals more generally, UIF benefits, employers not giving workers contracts, workers' entitlement to wage increases, unprocedural strikes, and workers' right to bargain collectively with bosses.

The plenary systematically looked at each of the issues raised, and collectively identified the source or absence of the relevant worker rights. The two exercises established that participants dealt with a wide range of worker rights and generally had a good grasp of the different sources of worker rights.

At the conclusion of these two activities, participants were invited to discuss some of the main obstacles facing advice offices when giving labour support. The two biggest problems were the dysfunctional state of the Department of Labour inspectorate, and CCMA rules that prevent organisations like advice offices from representing workers in its proceedings. Participants argued this was particularly prejudicial for domestics and farm workers, and others like them.

The facilitator followed these discussions with a summary presentation on the sources of worker rights. A booklet summarising the different Acts was handed to participants. However, the presentation focused on the rights in the Bill of Rights, the Basic Conditions of Employment Act (BCEA) and the Labour Relations Act (LRA).

Key worker rights are established in the following ways:

- An individual contract of employment between the worker and the boss covers the job the worker will do, his/her wages and other conditions. It can be written or verbal. The rights established in the individual contract of employment are through the common law, and not labour law. But the rights in an individual contract must be in line with the rights in labour laws.
- The Basic Conditions of Employment Act (BCEA 1997) stipulates minimum conditions of employment and covers all workers – even those often deemed ‘casual’. The BCEA does not set minimum wages.
- The BCEA allows the Minister of Labour to make sectoral determinations. These set minimum conditions of employment and minimum wages for workers in different sectors, like domestic and farm workers, for example. Workers covered by a sectoral determination are no longer covered by the BCEA.
- Collective agreements between worker organisations and bosses, allowed for by the Labour Relations Act (LRA No 66 1995). These agreements can be for a particular workplace, a company or a whole industry. Such collective agreements generally meant to improve on the conditions in individual contracts, the BCEA or sectoral determinations, and include wages that workers should be paid.

The Labour Relations Act gives most weight to collective agreements made between worker organisations and bosses. For example, if a worker’s individual contract of employment says the worker will get 15 working days annual leave and the union makes an agreement for 20 working days annual leave, the collective agreement made by the union will apply.

Participants, in groups, thereafter tested their improved knowledge by looking at 3 case studies. Each case study was followed by a plenary report back and discussion.

The facilitator followed up the exercise with a brief restatement of the key elements of the labour law framework.

The workshop then considered how to read sectoral determinations. The farm worker sectoral determination was used to facilitate this exercise but the intention was for participants to learn the generic skill of how to read determinations and (bargaining council) agreements. The proper reading of these enables advice office workers to give accurate advice to workers.

In the last session, participants were introduced to sections of the Black Sash paralegal manual dealing with worker rights, and the Worker Rights reference book and accompanying Worker Rights Toolbox CD, produced by the Casual Workers Advice Office as resources for advice offices.

In their assessment of the 2-day workshop, participants expressed their appreciation for how the subject matter was approached, for its concrete focus and the simplicity with which the facilitator dealt with the issues.

Housing Evictions

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28 January 2016

The Constitution of South Africa

The Constitution of South Africa guarantees everyone access to housing. Section 26 of the Constitution states:

1. EVERYONE has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. NO ONE MAY BE EVICTED from their home, or have their home demolished, WITHOUT AN ORDER OF COURT.



The workshop gave an overview of court procedures and an overview of applicable legislation in housing and eviction matters. The legislation discussed was the Extension of Security of Tenure Act 62 of 1997 (ESTA) and the Prevention of Illegal and Unlawful Occupation of Land Act 19 of 1998 (PIE).

- **Extension of Security of Tenure Act (ESTA) (62 of 1997)** ESTA establishes the housing and eviction rights and procedures for those living on land outside a township or on any land inside a township that has been designated for agricultural purposes. Unfortunately, very few rural evictions appear to follow the terms of ESTA.
- **Prevention of Illegal Evictions and Unlawful Occupation of Land Act (PIE) (19 of 1998)** The PIE Act is the principal piece of legislation establishing the rights and procedures to be respected in the eviction of an unlawful occupier from all land not covered by ESTA (i.e. urban). This act has been used thoroughly by property owners and poor communities alike. The Act aims to prohibit unlawful eviction.

Both ESTA and PIE will not prevent the occupant from being evicted but they allow people to follow proper procedures.

No one may be evicted from his or her home without a valid, stamped COURT ORDER.

Eviction Procedure under PIE

Step 1 - An occupier under PIE is entitled to WRITTEN NOTICE of an eviction proceeding at least 14 DAYS BEFORE the hearing of the eviction proceeding. The notice must state:

- That the occupier (s) is being evicted;
- The date and time of the hearing;

- The grounds (reasons) for the eviction;
- That the occupier has a right to defend the eviction; and
- That they can apply for Legal Aid Assistance.

The Sherriff is required to serve the occupier with the Notice, after authorization of service has been granted by the Court.

Step 2 - The Landowner should institute formal court application with Notice of Motion and Founding Affidavit. The application (Notice of Motion and Founding Affidavit) should be served on the occupier and the local Municipality.

Step 3 - The occupier should serve the landowners with Notice of intention to defend the application. If the occupier fails to do so, the landowner could proceed in with the application at court, obtain a date f hearing and the court can grant an order in the absence of the occupier (default judgement).

Step 4 - The occupier can thereafter serve their Answering affidavit. In the answering affidavit they should include the personal circumstances of the occupier, and whether or not they have alternative accommodation.

Step 5 - The landowner should then file his Replying Affidavit.

Step 6 - The matter can then be set down and heard in court on a specified date. In the hearing, the court needs to consider:

- Whether steps were taken to mediate and whether was meaningful engagement between the parties;
- Whether the eviction will lead to homelessness of the occupier (s);
- Whether it is just and equitable, after considering all the circumstances including whether the eviction will affect elderly, children, households headed by women and disabled persons

If the occupier has occupied their home for more than **6 months** the court must also consider whether land has been made available to the occupier, or can reasonably be made available by your city or another landowner. In deciding whether it is just and equitable to evict the court must consider:

- The circumstances under which the occupier has been occupying the land or building,
- The period within which they have been in occupation,
- The availability of alternative housing.

Temporary accommodation

If eviction will result in homelessness, the government must assist the occupier in gaining access to emergency or temporary housing, if it is within the government's resources. If the occupy was in occupation of on state-owned land they are entitled to stay there until basic accommodation is provided.

Just eviction date

If all the other requirements are met, and there is no valid defence; the court must determine a just date for the occupier to leave the land or building.

Eviction by sale in execution

If you are threatened with eviction to satisfy an UNPAID obligation, you may defend yourself if the execution is found to be UNJUSTIFIABLE.

Execution will be UNJUSTIFIABLE if: The advantage to the creditor is far outweighed by the hardship and prejudice caused to YOU as the debtor. The factors a court will consider include:

- Circumstances in which you incurred the debt
- Any attempts you made to pay off the debt
- Financial situation of the parties
- Whether you are employed or have any form of income with which to pay off the debt
- Any other relevant factor

The court must oversee a sale in execution and may only order an execution AFTER considering all the relevant circumstances.

Remedy for unlawful eviction

If you have been wrongfully dispossessed of your home, you can file a “spoliation application” with a court to get back possession of your home. In a spoliation proceeding you must show PEACEFUL and UNDISTURBED POSSESSION of your home and that possession was taken from you UNLAWFULLY. There is NO spoliation if you freely CONSENT to give up possession or if a COURT authorised dispossession. To bring a spoliation application, you must explain the circumstances that you believe make the matter URGENT and the REASONS why a later hearing is not sufficient. If you believe that you are being UNLAWFULLY EVICTED you should contact a LEGAL SERVICES PROVIDER immediately and tell them what has happened.

Courts & Jurisdiction

The Extension of Security of Tenure Act can be heard in the Magistrate Court. If an eviction order is granted against the occupier, it can be referred to a land claims court for automatic review of the decision of the Magistrate Court.

An eviction application under ESTA can be heard in the High Court only when both parties give prior consent. The Land Claims Court always has jurisdiction to hear an eviction under ESTA.

Before the court will hear a case, ESTA requires that the court request that a **probation officer** or any other officer in the employment of the state, as may be determined by the minister, submit a report within a reasonable period:

- On the availability of suitable alternative accommodation for the occupier;

- Indicating how an eviction will affect the constitutional rights of any affected person, including the rights of the children, if any, to education;
- Point out any undue hardships that an eviction would cause the occupier

Eviction Procedure under ESTA

Step 1 - The landowner is required to terminate the occupier's right to residence.

Step 2 - The landowner must issue a notice of intention to apply for eviction to the occupier, Municipality and Provincial Director of the Department of Rural Development and Land Reform. The notice must include grounds on which the eviction is based and be written in a language that can be understood by the occupiers. It should be so complete that the occupiers are left in no doubt about their rights and duties and consequences of a failure to protect those rights.

Step 3 - A formal application for eviction must be made. This includes a notice of motion and founding affidavit. The eviction can also be instituted by way of action whereby summons and Particulars of claim will be made.

Step 4 - The occupiers file a notice of intention to oppose. If a notice of intention to oppose is not filed the matter is then set down in court on the unopposed roll and the judge may grant a default eviction order.

Step 5 – The occupiers file an answering affidavit that includes the personal circumstances of each of the occupiers: such as names, ages, income, how they came to live on the property/land and the impact that the eviction will have on them.

Step 6 – The landowner files a replying affidavit. The owner may file a response to the occupier's affidavit, if he wishes to dispute any of the allegations made in the answering affidavit.

Step 7 – The court requests a probation report. In terms of section 9(3) of ESTA, the court must request a probation officer or an officer of the Department of Rural Development to submit a report within a reasonable period on the availability of suitable alternative accommodation to the occupier.

Step 8 – The court hearing takes place. At the hearing the court will decide whether it is just and equitable to evict the occupiers.

Before the landowner approaches court for an eviction application he needs to show that all reasonable steps have been taken by the parties to procure a mediated solution before an eviction order is made.

Family Law & Estates

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28 & 29 January 2016

Family law concerns all legal aspects relating to relationships between spouses, parents and their children and other blood relationships. Family law can be so vast that it can fit into different areas of law, such as estates, delict and criminal law. All laws in South Africa must be in line with the Constitution of the Republic of South Africa 108 of 1996 (“the Constitution”).

The interaction between participants and the facilitator around the case scenarios and the relevant examples dominated most of the workshop, with participants getting caught up in the discussions and at times wanting to dispute the law as it is. “Always keep at the back of your minds that some of the so-called laws are not true and are myths. For example, the myth of common law marriages. There is no law that provides for instances where a couple would be considered to be married if they just stay together for a period of time”, advised the facilitator. This was to indicate that the law cannot be deviated from. The participants were also reminded to be realistic and to try and resolve disputes through mediation. It is also important, when trying to mediate a matter, to keep in mind that both parties in a conflict have rights. “Most of the time, people would go to an Advice Office being desperate and expect you to perform magic or change the law somehow” the facilitator further added. Paralegals must make it clear to their constituencies that they (the paralegals) are not above the law and are instead representing the books of law.

Family law is very broad and sometimes it seems that certain laws are contradicting each other. It is important to thread carefully when dealing with the law, as there might be a specific rule, but a few exclusions to that rule.

Marriage

In a traditional common law definition, marriage can be defined as “a union of one man and one woman who mutually agree to live together as spouses to the exclusion of all others until the marriage is dissolved by the death of one of them or as otherwise provided by law”. This traditional view of a marriage has been adapted to include marriages that are concluded between persons of the same sex. In a more modern sense, a marriage is a contract between two people where they agree to live together as a couple. South African law recognises civil marriages, civil unions and customary marriages. Marriages according to the Muslim or Hindu custom are not legal marriages, but in terms of the Constitution, they are now equal to civil marriages in some instances; for example, spouses in these religious marriages will be recognised as spouses in order to inherit from their deceased spouse.

Civil marriages

Civil marriages are regulated by the Marriage Act. The following requirements are necessary to conclude a valid civil marriage:

- **Capacity** – A person over the age of 18 years has the capacity to enter into a marriage. Minor children (below the age of 18 years) need the written consent of their parents or legal guardians to enter into a valid civil marriage. If a boy is under 18 and a girl is under 15, they also need the written consent of the Minister of Home Affairs.
- **Consensus** – Both persons to the marriage must have the will to marry each other with the intention of concluding a marriage as understood by law. The validity of the marriage can be influenced where a mistake, misrepresentation, duress and/or undue influence were present. Impotence and sterility may also have an influence on the marriage, such as making the marriage null and void.
- **Lawfulness** – A person is not allowed to marry another person while there is a subsisting marriage; doing this constitutes a crime of bigamy. Persons of the same sex are not allowed to enter into a marriage under the provisions of the Marriage Act. Close relatives (parents and children, grandparents and grandchildren, uncle and niece, aunt and nephew) are not allowed to marry each other; this principle will also be applicable if the close relative was adopted. Cousins are, however, not forbidden to marry each other.
- **Formalities** – A marriage must be concluded by a marriage officer. The marriage must be concluded in the presence of a marriage officer and two witnesses. The Marriage Act provides for a formula of questions to be put before the couple. At the registration of their marriage, the couple is provided with a marriage certificate as proof that the marriage was concluded.

In community of property

A marriage that is in community of property entails that all the assets and debts of the spouses in the marriage, acquired or accumulated during the subsistence of the marriage, merge into one joint estate. Both spouses will be held liable for the debts of another spouse. If one spouse undergoes debt review, administration or sequestration, the other spouse is automatically added to the procedure. It is the joint estate that will be sequestrated and not the spouse.

Out of community of property

If the marriage is out of community of property, there is no existence of a joint estate. The assets and liabilities of the spouses remain in each of their separate estates. In order for a marriage to be out of community of property, the community of profit and loss must be specifically excluded by the drafting of an ante nuptial contract. Each spouse will therefore retain the estate s/he had before the marriage as well as everything s/he acquires during the marriage. The marriage out of community of property can also be with or without the accrual system. The accrual system is a formula that is used to calculate how much the larger estate must pay the smaller estate once the marriage comes to an end through death or divorce. Only property acquired during the marriage can be considered when calculating the accrual. The accrual system does not automatically apply and must be included in an ante nuptial contract.

Customary Marriages

A customary marriage is concluded in terms of the customary law, which refers to customs and usages traditionally among the indigenous people of South Africa. An African customary marriage takes place without a marriage officer. Lobola is customarily delivered. In most instances a ceremony takes place in celebration of the marriage. The Recognition of Customary Marriages Act gives full legal recognition to customary marriages and it is now

legal to enter into more than one customary marriage, the so-called polygamous marriages. The Recognition of Customary Marriages Act deals with the following:

- **Equal status and capacity:** The wife in a customary marriage is no longer regarded as a minor. She has equal status and capacity to that of her husband. This means that she can acquire and sell assets, enter into contracts and litigate.
- **Validity:** Both partners to a customary marriage must consent to the marriage and they must be 18 years or older. If a person under the age of 18 wants to enter into a customary marriage, s/he must first obtain the permission of their parent/s or legal guardian/s. If such consent cannot be obtained, the minor may ask the presiding officer of the Children's Court to consent to the customary marriage. In instances where the presiding officer of the Children's Court, parent/s or legal guardian/s withhold consent, the minor may approach the High Court.
- **Customary law:** The customary marriage must be negotiated and entered into or celebrated in accordance with customary law. This causes some confusion in practice as it is not clear whether lobola is a requirement for the validity of a customary marriage or not.
- **Registration:** The marriage must be registered with a registration officer at the Department of Home Affairs within three months of the wedding date. The main purpose of registering the marriage is to provide proof that a customary marriage exists, which will help the parties if any dispute arises about the validity of the marriage. Failure to register a customary marriage does not affect the validity of the marriage.
- **Property and assets:** It is important to take note that the patrimonial consequences of a customary marriage depend on whether the marriage is monogamous or polygamous. If a customary marriage is monogamous, the matrimonial property system is determined by the same rules as civil marriages. In other words, the marriage will be in community of property, unless this is excluded in an ante nuptial contract. Spouses to a customary marriage can apply to the High Court to change the property system of their marriage. A husband who is already a party to a customary marriage and who wants to enter into another customary marriage, must prior to the celebration of the new marriage obtain the court's approval of a written contract which is to regulate the future matrimonial property system of his marriages. In instances where the existing customary marriage is in community of property, the court must terminate the matrimonial property system and effect a division of the property. The court must ensure that the interest of all the parties is taken into account and that property is justifiably distributed. All persons having a sufficient interest in the matter and, in particular the husband's present and future wives, must be joined in the proceedings.
- **Inheritance:** The Recognition of Customary Marriages Act does not change the law on inheritance. A spouse from a customary marriage has the same recognition of a spouse from a civil marriage to inherit from his/her spouse's intestate estate (where a person passed away without a valid Will).
- **Custody of children:** The Recognition of Customary Marriages Act empowers the court to make an order regarding the guardianship or care of a minor child born of the customary marriage. A family advocate must investigate the welfare of children and furnish the court with a report and recommendations. In respect of maintenance, the Recognition of Customary Marriages Act dictates the court to take into account any arrangement made in accordance with customary law.

A customary marriage is recognised for these cases:

- The spouses can claim support money from each other if they are divorced;
- A wife can claim some inheritance rights if her husband dies;
- A wife can claim benefits under a pension scheme if her husband dies;
- A wife can claim compensation under the Compensation for Occupational Injuries and Diseases Act 130 of 1993 if her husband dies in an accident at work.

Divorce

In terms of section 3 of the Divorce Act, a marriage can only be dissolved on the following grounds:

- Irretrievable break-down of the marriage; and/or
- Mental illness or the continuous unconsciousness of a party to the marriage.

Section 4 of the Divorce Act deals with the irretrievable break-down of the marriage and states that the court may grant the decree of divorce if it is satisfied that the “marriage relationship between the parties to the marriage has reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them.” As proof of the irretrievable break-down of the marriage and in addition to the circumstances and facts of a particular case, the court may consider evidence such as the following, that:

- Prior to the institution of the divorce proceedings, the parties have not lived together as husband and wife for a continuous period of one year;
- The one party committed adultery of which the other party finds it irreconcilable with a continued marriage relationship; or
- The defendant has in terms of a sentence of a court been declared a habitual criminal and is undergoing imprisonment as a result of such sentence.

A court may postpone divorce proceedings if there is a reasonable possibility of reconciliation between the parties, which can be achieved through marriage counselling, treatment, or reflection. Section 5 of the Divorce Act states that a decree of divorce may be granted on the ground of mental illness of the defendant. A decree of divorce may also be granted on the ground of physical disorder or unconsciousness of the defendant.

Kinds of maintenance awards in divorce matters

Spousal Maintenance

The reciprocal duty of support created by marriage is terminated by divorce and the spouses are not required by law to maintain each other anymore. The court granting a decree of divorce may, however, make an order with regard to the payment of maintenance in favour of one of the parties.

- **Maintenance order if there is an agreement between the parties:** The parties may conclude a written agreement regarding the maintenance, which one has to pay to the other. Such an agreement may be made an order of court. The court has a discretion in this matter and may refuse to issue an order regarding the agreement. A *dum casta* clause is a provision where maintenance will be paid to a party on the

condition that s/he leads a faithful life or does not cohabit with anybody else. There is no absolute answer on the legality of a *dum casta* clause in a settlement agreement. It can be argued on the one hand that it would be unfair for someone to maintain such a person while s/he is also being maintained by a new spouse. On the other hand, it can be argued that it should not be legal due to the former spouse retaining control of the other person's life.

- **Maintenance order in the absence of an agreement:** In terms of section 7(2) of the Divorce Act, the court may make a maintenance order in the absence of a written agreement between the parties regarding maintenance. This section lists certain factors which a court has to take into account upon deciding whether maintenance should be paid and what the extent of such maintenance should be.

Child Maintenance

The obligation of parents to support their children is not terminated by divorce. Both parents must still maintain their children in proportion to their respective means. Parties to a divorce action can reach an agreement between themselves regarding maintenance for their children, but the court is not bound by their agreement and may issue a different order that is in the best interests of a child. A court is empowered in terms of the Divorce Act to make whatever order it deems fit for the maintenance of a dependent child of the marriage. The duty of support continues as long as the child is in need of support and the parents are in a position to provide maintenance. In deciding how much the court will award for maintenance, factors such as the age of the child, health, educational needs, the financial means of the parents and the standard of living of the family at the time of divorce are considered. As a rule, a maintenance order during divorce proceedings provides that maintenance is to be paid until a child reaches a certain age. If the date of termination is not provided for, the maintenance order remains in force until it is rescinded by order of court. A person that does not pay maintenance in terms of a maintenance order will be in contempt of court and can be criminalised and imprisoned.

Estates

In both monogamous and polygamous (if customary law applies) marriages, children are entitled to a share in the estate of the deceased. A "child", in legal terms, refers to a biological child and an adopted child. If the deceased estate is subject to the customary law, a child might also include a child that the deceased has been raising as his/her own in terms of the customary law applicable.

A deceased estate will be either distributed in terms of a Will (if the deceased had a valid Will) or in terms of the intestate succession (if the deceased died without a valid Will).

If there was a Will, there are specific requirements that must be met before the Will can be considered to be valid. These requirements are:

- The Will must be in writing.
- The Will must be signed at the end of it by the testator (person whose Will it is) and two witnesses.
- The testator and the two witnesses must sign the Will in the presence of each other. It should be noted that a person who signs as a witness is disqualified from receiving any benefit from the Will.

- If the Will consists of more than one page, each page must be signed by the testator and by the witnesses anywhere on the page.
- If the testator is not able to sign the Will (for example where s/he cannot read or write), someone can sign the Will on his/her behalf or the testator can sign the Will by the making of a mark (like a thumbprint or a cross). In this instance, a commissioner of oaths must also be present when the testator makes the mark or someone else signs on behalf of the testator.
- Any provision in the Will may not be against the public interest or good morals.

Once it has been established that there is a valid Will, the Will will indicate how the deceased wants to distribute his/her belongings and to whom it will be distributed to. The Will can also indicate that all previous Wills must be revoked, who the executor (person responsible for administering the deceased estate) should be, who should be appointed as guardian of any minor children and so on. The Will can also include that a trust be formed to keep certain money on behalf of minor children.

If there are two valid Wills available and it is unclear whether anyone of them has been revoked, the two Wills will be read together by the executor of the estate. It is therefore very important to ensure that your Will is up to date and that any previous Wills you do not want to be taken into account be properly revoked.

In the event where the deceased did not have a valid Will, his/her deceased estate will be distributed in terms of intestate succession. Intestate succession is governed by the Intestate Succession Act which gives clear indications as to who will be entitled to inherit from a deceased estate if there was no valid Will. The basic rule is that the deceased will be distributed amongst the nearest family first, such as the surviving spouse and children.

Debts cannot be inherited, but when someone inherits a house with an amount owing, then this amount must still be paid (either by the deceased estate, an insurance policy, or the heirs), or the house will have to be sold.

Social Audits

Nosiphelele Msesiwe & Luthando Tokofa
Social Justice Coalition
28 & 29 January 2016

The workshop started with the facilitator showing two videos covering issues of corruption in Likoni village (Kenya) (<http://www.youtube.com/watch?v=z2zKXqkrf2E>) and Khayelitsha (Cape Town) (<http://nu.org.za/socialaudits/>). The videos were discussed in plenary and the facilitator also shared a personal story, namely, that she was a victim of service delivery while she was working as a public toilet cleaner in Cape Town. The toilets were not properly built and that is how she came to be involved with social audits.

A social audit is a community-led process that facilitates public participation in the monitoring of government service delivery and expenditure. During Social Audit processes communities study government documents and compare them to their experience as recipients of a public service. Evidence and experiences are collected, presented, and then discussed with government officials at the public hearing. It rests on the premise that when government officials are watched and monitored, they feel greater pressure to respond to their constituents' demands and have fewer incentives to abuse their power. In order to effectively monitor and evaluate their governments and decision-makers, citizens need particular skills, capacity and tools.

According to the facilitator, social audits are a key component of any democratic governance and anti-corruption strategy. They can assess the quantity of public resources being managed by governments, although increasing focus is now being given to issues of *quality* of public services, social and economic investments, public policies and decisions.

Democracies around the world, particularly those that are in the process of consolidation, face enormous challenges not only in the economic and social realms, but also in the democratic governance sphere. Although leaders in these countries, in different levels of government (national and subnational) are now elected through relatively fair and transparent processes, once in power they often face critical challenges to adequately represent their constituencies and respond to their needs and demands. This often increases disappointment, cynicism and apathy on the part of the citizens, and can adversely affect the quality and effectiveness of democratic governance and create opportunities for corrupt practices and wasteful management. In a large part, this democratic governance deficit results not only from a lack of institutional and technical capacity to resolve long neglected and increasingly complex social and economic problems, but also from a failure to adhere to basic democratic governing principles, including transparency and accountability.

Citizens elect their leaders expecting them to represent their constituencies effectively and to introduce, implement and monitor public policies that will respond to collective needs. Similarly, constituencies expect democratically elected leaders and public officials to be responsible for their decisions and actions and to be accountable to the citizens they serve. Democratic governance encourages citizens to reward and/or punish public officials for their performance and hold them accountable. In older democracies, public accountability and transparency is enhanced by independent work on public spending conducted by the media, CSOs and think tanks. By contrast, in younger democratic countries there is still a deficit of local capacity and independence of government entities to review, monitor and report on

public resource management and expenditures. In these instances, social audits can show how governments are managing public resources and what the impact of their investments is.

The Social Justice Coalition, through a network called the Social Audit Network, offers a range of training opportunities and support for organisations wishing to learn more about social audits. It has also developed a Social Audit guide that will be used by all those organisations who want to conduct social audits. More information on this can be found on the following website: www.socialaudits.org.za, together with all of Social Audits that SJC conducted in the past years.

Forward with Social Audits!

Stream 3 – Mobilisation

Organising in Communities

Ravin Singh
Education and Training Unit
26 & 27 January 2016

“Go to the people. Live with them. Learn from them. Love them. Start with what they know. Build with what they have. But with the best leaders, when the work is done, the task accomplished, the people will say: we have done it ourselves”
– Lao Tzu

The workshop was opened with the above-mentioned quote, which says that power should be given to the people. Community organisers should work together with the community, whereby the organiser learns from the community and the community learns from the organiser. The organiser doesn't do things for the people but they enable the community to do things for themselves so there can be ownership. As an organiser, our task is to put power in the hands of the people. The organiser shouldn't give solutions to the people but they should ask *questions* that will lead people to come up with their own solutions.

Assumptions of community organising

When the organiser goes to the people, it is his/her duty to assume that:

1. Communities have and can develop the capacity to deal with their own problems.
2. People want change and can and should participate in making, adjusting or controlling the major changes taking place in their communities.
3. Major changes can only be made by people themselves for themselves.
4. Changes in community living, which are self-imposed or self-developed have a meaning and permanence that imposed changes do not have.
5. Link issues to the bigger picture. A “holistic approach” can deal successfully with problems that a “fragmented approach” cannot deal with.
6. Democracy requires cooperative participation and action in the affairs of the community and people must learn the skills with which to make this possible.
7. Frequently, communities of people need help in organising to deal with their needs.

Characteristics of organising

Organising requires a longer-term plan. It is advisable to work with what is already there and what the people from that place know and are familiar with. This also assists in terms of identifying the active participants whom the organiser will learn from. Some characteristics of organising are that:

- It happens within the context of distinct and interconnected people development approaches;
- The intention is to fundamentally challenge power as it is, to get to the root cause and shift power blocks;

- Community organisers seek to find the community’s agenda, rather than working on an agenda predetermined by employers, funders or local/national government;
- Animators and organisers work with people’s passion, to transform it into powerful positive social action that tackles causes – not just symptoms;
- Animators wake people up to themselves, to each other and to possibility;
- Organisers organise and focus collective energy/power to shift established barriers and power blocks;
- Organisers work with power, by building it, using it and by challenging it democratically – they understand power and are not afraid of it;
- Organising is a political activity because it is about shifting power.

The real work of an organiser

The real work that an organiser should focus on, is to:

- Get to know the community
- Identify the key issues facing the community
- Identify and contact key individuals and community groups
- Recruit community members
- Build a communication system
- Encourage leadership from the community from the beginning
- Create a structure to help the community accomplish their goal
- Strategize
- Decide what kind of actions will work best in your community, and what kind of actions the community is and is not willing to take part in

Skills that organisers should possess

An organiser should research with the purpose of understanding the community, network with other stakeholders. Build a communication system and create support structures that can help address the problems identified. Loyalty, clear communication, integrity and humanity are very important. Do not give people false hope as this will not help earn the trust from the people you are working with. Good listening skills, the ability to engage with people and bring them together, negotiate, motivate, facilitate are all essential skills, as well as having a proper administration system in place. A list of important skills are listed below:

- | | | |
|----------------|------------------|--------------------|
| ○ Listening | ○ Organisation | ○ Mediating skills |
| ○ Coaching | ○ Facilitating | ○ Networking |
| ○ Researching | ○ Analysing data | ○ Communicating |
| ○ Activating | ○ Campaigning | ○ Problem-solving |
| ○ Reflection | ○ Questioning | |
| ○ Cold-calling | ○ Group support | |

Researching the community

The organiser has a responsibility to know his/her community in depth. An organiser should:

- Know the demographic data for your community (number of inhabitants, number of women and men, children, boys and girls, age categories, etc.);
- Know the physical environment (e.g. know where the taxi ranks, clinics, schools, councillors office, shops, community hall and churches are located);
- Have access to government services;

- Know which problems people experience in the community and how these different problems interact with one another (e.g. does the water problem mean women are more exposed to crimes such as rape?);
- Know what else is happening in the community (community life).

If someone asks you something about the community, you should be able to answer, or at least know where/how to find the answer.

Running campaigns: two examples

An important role for the organiser is to organise campaigns. When organising a campaign, you have to involve other organisations, people in the community, teachers, churches, etc. You should think about how to raise awareness through posters and the media. Be creative and report back to the community. Run a positive campaign and make sure people are able to identify with your campaign.

The facilitator asked the participants, if they were to run a campaign on condom education what could be a potential end goal?

- Answer by one of the participants – “To create a HIV&ADIS free community and to decrease the number of teenage pregnancies.”

How would you go about reaching that goal?”

- Answer by one of the participants – “To teach people about condoms you have lead them to the access of condoms, whether in school or, taxi ranks anywhere where they are groups of people.”

Another question posed by the facilitator was: *“There is a cycling campaign that aims to get people to start using bicycles to minimise pollution but no one engages in it, what could be the possible reason for that?”*. Participants really struggled to answer this question, but eventually came up with varied answers – participants did not own cycles, could not cycle, no fit, scared to ride on roads with reckless motorists, etc.

Right to Responsible Gathering

Sheniece Linderboom & Sipiwe Segodi
Freedom of Expression Institute (FXI)
27 & 28 January 2016

The Freedom of Expression Institute is a not for profit non-governmental organization which was established in 1994 to protect and foster the right to freedom of expression. Its aim for the workshop is to empower community advice offices with the necessary information and skills to advise community members how to gather and capacitate the advice officers with the tools and knowledge to intervene in various situations including when the right to protest is being violated.

Freedom of assembly is an important feature of any democracy, creating a space to speak and to be heard. Freedom of assembly is widely recognized and protected in international instruments as well as the national level, as there is a law in South Africa that states the importance of the right to gathering, namely, The Regulation of Gatherings Act, 1993 ("the Gatherings Act"). This law regulates matters associated with gatherings that express any form of protest, contest or criticism in a public space. The Gatherings Act explains in detail exactly what must be done in order for a gathering to be considered legal by the authorities. The act further states that "the exercise of such right shall take place peacefully and with regards to the rights of others".

Key terms used in the RGA

- **Gathering** – A march, picket or parade of 16 people or more taking place in a public space with the aim to express contestation or be critical towards a person, company or government body. A gathering requires prior notification to the relevant local authority.
- **Demonstration** - A march, picket or parade of 15 people or less is called a "demonstration" and requires no notification.
- **Notice** - Giving notification is not the same as asking for permission. ***No one needs permission to hold a gathering because no one needs permission to exercise their constitutional right to assemble, picket, march or demonstrate.***
- **Responsible officer** - Every municipality is expected to appoint a responsible officer, who will act as the facilitator of the procedures of a gathering
- **Convener** - The person appointed by the community/organisation or self-appointed to organise and coordinate the gathering
- **Marshal** - People appointed by the convener to assist in maintaining order during the gathering

Roles and responsibilities of the convener

- Act as a liaison person between the responsible officer (RO) and the group planning action
- Furnish the responsible officer (RO) with relevant information in the notice (see below)
- Attend S4 (the meeting called by the RO to discuss the details of the gathering)meeting if convened

Role and responsibility of the responsible officer (RO)

- Representative of the state
- Accept the notice
- Call a meeting if necessary
- Restrict/prohibit the gathering if necessary
- Liaise with police and convener

Police roles and responsibilities

- Liaise with the RO regarding gathering
- Authorised member participate in S4 meetings
- Furnish RO with necessary information
- Challenge RO's decision if necessary e.g if he/she doesn't agree with the RO's decision he/she may approach the court for appeal
- Ensure that police officers at the gathering are aware of the notice contents

Police powers

- Notify protesters of lack of any capacity to protect them
- Ensure that protesters stick to the route, if RGA was followed
- Restrict/guide gathering to particular place (if not following RGA)
- Ensure least possible disruption to traffic
- Ensure appropriate distance between two rival gatherings
- Keep anyone interfering with protesters at an appropriate distance
- Disperse protesters under certain circumstances after issuing notice
- Use proportionate force if necessary
- Use fire arms if necessary to prevent damages, injuries and/or deaths
- Maintain protesters' and non-protesters' safety

Questions that arose from the group

- *Do we need to apply for a march?*
No, you notify. The convener will give notice to the RO for the gathering. The advice officers can assist in preparation of the notice and liaising with the authorities should there be any arising issues from the notice. AO may refer a convener to pro bono legal services if a need arise e.g to appeal the RO's decision
- *Is there a reply to expect?*
Not always. If the RO is unclear or have other reasons to reply or call a section 4 meeting Prohibition should only be on listed ground under the RGA
- *What to do in case there is no reply?*
The law is interpreted in such a way that if there is no response after 24 hours after submitting the notice and until the day before the gathering it means the responsible officer didn't see a problem with your notification and you can go ahead with the gathering as stated on the notice form.
- *How many days before the gathering day should we give out the notice?*
The notice should be given out 7 days prior to the gathering, to the responsible officer. It can only be submitted later than 7 days if it was not reasonably possible to do it earlier and there is a valid reason for the short notice of no less than 48 hours

Notice gatherings

Planning for a gathering you will need to send a notice to the Responsible Officer an organisation needs to have one member to represent (convenor and eputy convenor) and these details will be needed from them:

- Name
- Surname
- Address
- Telephone no.
- Cell phone no.
- Expected number of marchers/members of the gathering
- If it is a procession, what form will it take and how will the participants get to the place of gathering and from the place of departure, or will the vechile form oart of the procession. Will there be any form of transport in your march (buses, taxi's)
- If any loud noise will occur like "loud hearings"

As a Convenor you must make sure you keep a copy of your notice and make sure you have proof that you gave it to the local authority – the RO.

Consultation & negotiations

There might be a need for consultations to be held between the police, the local authority and the convenor to discuss the content of the notice and any necessary conditions for the conduct of the gathering. The responsible officer has the discretion to call a meeting within 24hrs after notice given by the convenor. In cases where no such meeting is called, the gathering can take place in accordance with the notice. Experience though point to the fact that many RO's only call this meeting at an eleventh hour. This has the negative effect of denying the convener an opportunity to appeal in court if they need to do so.

Dangerous Weapons Act 15 of 2013

The Responsible Gatherings Act has been amended in line with the Dangerous Weapons Act (DWA). It is now an offence to be found in possession of any item defined as a dangerous weapon during a gathering. The act defines a dangerous weapon as: any object, other than a firearm, capable of causing death or inflicting serious bodily harm, if it were used for an unlawful purpose. This means one cannot carry sticks, pangas or knobkerries, which is seen as problematic as these are an integral part of many cultures that exist within South Africa. Someone found guilty of being in possession of such items in the gathering may be liable to imprisonment or a fine. Other criminal charges may be laid depending on the nature of the action.

Liabilities for damage

Chapter 4 of the Act creates what is termed 'strict liability'. This means that organisers of the gathering will be jointly and severally liable for riot damage. This section has the potential to discourage members of the public to organise public demonstrations or gatherings for fear of being held liable for damages that may be caused by unruly participants. A fine not exceeding R 20,000 or imprisonment for a period not exceeding one year or both such fine and imprisonment may result.

Citizen-Based Monitoring

Deena Bosch
Black Sash
28 & 29 January 2016

The Black Sash offered an introduction to Community Based Monitoring. Participants interested in and whose organisations intended to do Community Based Monitoring of public services with their communities were invited to join the 2-day training workshop. Participants had to be eager to learn about the use of computer technology in the gathering of evidence and monitoring of service delivery.

Black Sash started its community based monitoring and advocacy work as early as 2009. Black Sash's CBM has evolved over the years. The introductory course presented at the 2016 Dullah Omar School looked at the organisation's CBM model using light touch surveys to monitor the South African Social Security Agency (SASSA) – monitoring the local service offices as well as pay points.

There are several benefits of CBM for civil society organisations, service users and government departments and agencies. Service users and communities are more than just mere recipients of public services; an informed citizenry is an asset to government and society at large and an improved service delivery can be built when government is open to the valuable contribution communities can make through monitoring activities, study the results, develop improvement plans and monitor the implementation of these plans together.

In 2014 Black Sash was part of the global Making All Voices Count project and in this light the CBM model was refined and the use of modern information and communication technology was introduced to access the surveys for data gathering, automated analysis and report production using info-graphic posters.

The following steps of this CBM model follows were presented and discussed:

1. Getting your organisation ready and contracting with community partners – the importance of working with other stakeholders in your community. Establishing a team consisting of a CBM leader and selecting good monitors. The team should know how SASSA works: social grants, norms and standards, relevant policies as well as the Batho Pele principles. Understanding the citizen as well as frontline staff surveys to be administered. Setting the timeframes for the whole exercise.
2. Establishing government relationship – letting government know you are intending to do this monitoring exercise; explaining the benefits for all and that you will share the results with them and the importance of working together to learn from and keep what is working well, and then to address aspects of the service that are lacking and should be improved to offer the required level of service as prescribed by the norms and standards set for the agency.
3. Engage the local SASSA facility – entering into a good working relationship would help the exercise immensely. But if not successful at the first attempt, it is important to keep

at it and through the monitoring cycle the local office might become more accepting of the work being done by your organisation.

4. Data gathering - monitor facility using computer technology
 - a. Service users / community
 - b. Frontline Staff
5. Report findings - making sense of the survey results to be presented by your CBM team at the dialogues.
 - a. Community, service users - report
 - b. Frontline Staff - staff
6. Prepare & Conduct Dialogues
 - a. Community stakeholders with government facility management & staff representatives
 - b. Facility management & staff

This is an important step of the CBM exercise. Bringing civil society and civil servants together to study the results of the survey to validate the results and together develop an Improvement Plan to improve services. A Joint Monitoring Committee is then constituted (community stakeholders & government officials) responsible for ensuring that the plan is implemented.

7. Engage in advocacy campaigns to improve the service delivery – the Improvement Plan adopted at the dialogue guides this work.

Black Sash is developing a CBM web platform which will go live in April 2016. Community based organisations and other NGOs will have access to the platform and will be invited to join Black Sash in this CBM work.

Stream 4 – Development & Inclusive Governance

NPO Governance Training

Colleen Alexander-Julies & Vuyo Msizi
Social Change Assistance Trust (SCAT)
26 & 27 January 2016

Understanding Non-profit Organisations (NPOs)

Both non-profit organisations (NPOs) and for-profit organisations (businesses) are created to fulfil a need: they provide a product or a service. A person that opens a business must carry out some research and identify an intended market. There must obviously be a market to sell the intended products. When starting a non-profit, there should equally be a need for the service that the organisation will offer.

The person who creates ('founds') the NPO does not own the organisation, unlike the private business entity where investors own the company. The goal of a for-profit business is to create profit for its owners. Businesses are required to pay taxes on the profit. An NPO has a mission that benefits the 'greater good' and it must use its money towards its mission. An NPO can make a profit but this must be used to sustain and/or grow the operations of the organisation.

Legal Framework for NPOs

By law there are 3 forms of NPOs:

- Voluntary Associations (common law)
- NPO Trust (statutory law)
- Non-profit Company (statutory law)

NPOs can register themselves under the NPO Act and apply for the status of a 'Public Benefit Organisation' (PBO) with SARS. As a PBO an NPO can apply for the right to receive tax-deductible donations.

Codes of Good Practice for NPOs

The Codes of Good Practice for South African NPOs were issued by the Department of Social Development (DSD) in terms of section 6(1)(b)(i) of the Non-profit Organisations Act 71 of 1997. It can also be found on the DSD website.

The purpose of the Codes is to give effect to the objective of the NPO Act that is to encourage and support NPOs in their contribution towards meeting the many needs of South Africa's diverse population by:

- Creating an environment in which NPOs can be productive and effective
- Developing the abilities of NPOs to become effective partners with government and the private sectors in the upliftment and care for South Africa's communities and environments

- Encouraging NPOs to accept the responsibilities of ensuring that they respond to and maintain high standards of practice in: good governance; effective management; optimisation of resources; successful fundraising; productive relationships with government's beneficiary communities, donors, sponsors and the general public; careful administration of their organisations and ethical behaviour.

Three major responsibilities of NPOs

- Make sure that its service programme is meeting the community needs or problems effectively and efficiently.
- Establish a reliable and sustainable support base (funding & other resources) in order for the organisation to fulfil its work.
- Ensure that procedures are in place to ensure the careful and accountable handling of all the organisation's resources and programmes.

Roles and Responsibilities of Governing Bodies

- 1) Determine the organisation's mission and purpose
- 2) Select and appoint the chief executive officer
- 3) Support the CEO and review his/her performance
- 4) Ensure effective organisational planning
- 5) Ensure the organisation has adequate resources
- 6) Manage the organisation's resources effectively
- 7) Determine and monitor the organisation's programmes and services
- 8) Enhance the organisation's public image
- 9) Serve as a court of appeal
- 10) Measure its own performance

An NPO needs to have particular organisational structures in place, that stipulates:

- How staff communicate with one another
- How staff report or account to one another
- How decisions are made and who takes them
- How the work is organised
- Who does what (roles and responsibilities)

An NPO exists and is sustained by its ability to maintain open and productive relationships with its key stakeholders. Key stakeholders are those that the organisation serves, those who provide resources to the organisation and those who create an enabling environment in which the organisation operates. The director and the board of an NPO must be accountable and responsible for the resources and assets of the organisation. They must also have relevant skills to run the organization.

Compliance Requirements of Registered NPOs

The NPO Act 71 of 1997 establishes a framework within which NPOs can conduct their affairs and encourages NPOs to maintain adequate standards of governance, transparency, and public accountability. NPOs should:

- Reflect their NPO status and registration number on formal documents
- Keep accounting records

- Draw up financial statements within 9 months of the end of the financial year
- Compile financial reports within two months of drawing up financial statements & submit to NPO Directorate
- Submit a narrative report to the NPO Directorate
- Submit contact details of office bearers
- Submit changes in the NPOs address

Social Security

Colleen Ryan, Nelisiwe Xaba & Jerome Bele
Black Sash
26 & 27 January 2016

Social assistance is protection offered by the State to alleviate poverty and to assist those who would otherwise not be able to afford basic needs such as food and clothing. This assistance is granted without any contribution expected in return. One way in which the State offers social assistance is through social grants. A social grant is not a favour from government but a human right. There are seven different types of social grants: the child support grant, grant-in-aid, older person grant, foster child grant, care dependency grant, disability grant and war veterans grant. The facilitator explained the procedure as to how an individual in need can access different types of grants (read more about this in the PowerPoints 'Social Grants' and 'Children's Social Grants'). Some of the benefits are accessible to foreigners and that process was explained in detail.

In addition to the grants mentioned above, there are other types of grants or assistance such as the transport allowance (which enables sick people to travel to collect medication) and for those previously unemployed who have found a job but don't have the money to reach the place of work. Before someone can access this type of assistance they will need to show a letter from the employer or doctor. The social relief stress comes in the form of a food voucher. The recipient will have to pay this back at some point.

Some of the challenges in the social assistance system

- **Service delivery**
 - Unlawful Deductions from grant beneficiaries accounts
 - Fraud and corruption
 - Not everyone who is eligible receives a grant
- **The policy gaps in the Social Assistance system**
 - All the grants are currently means tested except for the Foster Care Grant - excluding many poor people who earn just over the very low prescribed thresholds.
 - The following categories of poor people receive no income support from government:
 - Unemployed youth (19-25) and adults (26-59)
 - Care givers of children
 - People with chronic illness, unless they are functionally disabled

Unlawful and immoral debit deductions from social grants

In 2012/2013 monitoring activities by Black Sash showed evidence of unlawful and/or immoral debit deductions from social grant recipients SASSA/Grindrod linked bank accounts. In 2013 Black Sash engaged SASSA & CPS to end the escalation of this phenomenon. In the second half of 2013 SASSA launched a public media campaign, to create awareness among grant beneficiaries. However, Black Sash feels SASSA's intervention has been ineffective as it concentrated on individual rather than system issues.

The facilitator explained how every month, money is deducted from the accounts of beneficiaries of social grants without their permission by SASSA subcontractors CPS and Net1. Legally, the only deduction that can be made from a social grant before it is paid to a beneficiary is a single 10% deduction for funeral insurance. The rest of the grant amount must be paid out in full to the beneficiaries. The Black Sash, which has been running a “Hands Off Our Grants” (HOOG) campaign, which aims to stop the deductions and for beneficiaries to be reimbursed. The campaign has documented hundreds of cases of unauthorised deductions from beneficiaries’ accounts for airtime, loan repayments, electricity and even water with no affordability assessments done, no documents signed, and loan repayments continuing after the “agreement” was over. Black Sash has attributed the introduction of Cash Paymaster Services (CPS) in 2012, to the overwhelming number of complaints about the illegal transactions received.

In response to the Black Sash campaign, the Minister of Social Development set up a task team to investigate the problem. The team reported in August 2014 and the minister accepted its recommendations, including the design and implementation of a SASSA system to stop “unlawful and immoral debit deductions” and to make sure the money is refunded to beneficiaries. However, according to the facilitator from Black Sash, Colleen Ryan, the system does not ensure that deductions will be stopped and that beneficiaries will be refunded.

The HOOG campaign calls for amendments to the Social Assistance Act, so that it criminalises the use of social assistance grants as collateral by lenders, and to the National Credit Act so that social grants are not considered as income. In 2014, Minister of Social Development Bathabile Dlamini said the government would take steps to prevent social grants being used as collateral for loans.

SASSA claims that currently, approximately 1 million beneficiaries’ bank accounts are affected by unlawful or immoral debit deductions. To date, the scale of abuse remains unclear. If these unlawful and/or immoral debit deductions are left unchecked 10 million SASSA beneficiary bank accounts are at risk.

What can Community Advice Offices do?

Black Sash has designed a social grants deduction questionnaire, that partners and Advice Offices can ask affected persons to fill in. These questionnaires can then be submitted to Black Sash, with supporting evidence. The information should be send to Elroy Paulus, Advocacy Manager, or Colleen Ryan, CTRO Regional Manager. Black Sash will ensure submission of cases to the Ministerial Task Team or Regional SASSA office, report on follow-up will be done by the nearest or local Advice Office or Community partner.

Globalisation, Its Impact And The Role Of Advice Offices

Ighsaan Schroeder
Casual Workers Advice Office
28 January 2016

Course objectives

The objectives of the course were to:

- 1) Deepen participants' understanding of the process of social restructuring that has occurred over the last 30 or so years, sometimes referred to as globalisation
- 2) Deepen their understanding of why this process has occurred
- 3) Assist them in locating the issues and problems communities bring to advice offices within this process of social restructuring
- 4) Provoke a debate around how best advice offices should respond to the impact of globalisation.

Course structure

The course was structured along the following themes:

- 1) Establishing participants' existing understanding of what globalisation is.
- 2) Exploring how advice office cases reflect the impact of globalisation on communities
- 3) Sharing experiences of how communities (including students and workers) have responded to globalisation
- 4) Evaluating if the response of advice offices have been effective
- 5) Debating advice office responses to globalisation

The participants of the course represented a spread of very experienced advice office workers, including most of the ACAOSA national leadership, and some relatively new to the sector.

The content of the workshop started with each participant making a drawing of what they thought globalisation is. Participants were then requested to identify common themes from their respective drawings.

In plenary, the following common themes were identified:

- The big growth in unemployment, poverty and social problems such as drug abuse
- The growing distinction between formal and informal work
- The greater gap between the rich and the poor
- Increasing environmental damage and changes in climate
- The increased power of the rich countries in the north

The points raised were noted for further elaboration in subsequent activities.

In the next activity, participants, in groups, identified problems in their communities resulting from globalisation. These included a lack of service delivery, unemployment, migration, xenophobia, substance abuse, violence and corruption. The groups were

challenged to provide a motivation for each problem it identified as resulting from globalisation.

The facilitator followed on with a summary presentation on what globalisation is, drawing on participant inputs in the preceding activities. Key points from the input were that globalisation is the result of a profits crisis in the capitalist system, dating back to the late 1960s, and can be summed up as an attempt by bosses the world over to resolve the problem of falling profits. It is sometimes also referred to as neoliberalism. What it has done is to change the relationship of power between the bosses and the dominated classes in society in such a way that bosses are even more powerful and can use that power to increase the profits it makes out of the dominated classes, the working class in particular.

There are three key elements to globalisation:

- 1) The changes the bosses have made to the world of work. They attacked trade unions, introduced new technology and created new kinds of workers, like labour broker and 'zero contract' workers. All of these were efforts to make more profits.
- 2) The changed the role of the state. The state privatized many of the services it provided citizens, from housing, to healthcare, and other basic services, to education. This opened up new areas of profit-making for bosses. The state removed restrictions on profit making through a process of deregulation, of changing laws, including labour laws, to make it easier for bosses to make bigger profits. The state also helped companies keep their profits by cutting company taxes, forcing the dominated classes to pay more tax while at the same time cutting expenditure on social services.
- 3) The rise of 'financialisation' and the emergence of 'money bosses' as the most powerful section of the bosses' class. Through speculation on the stock exchanges and the currency markets, the extension of debt and a whole range of new financial 'products' and services, money bosses have made massive profits. Bosses in all other sectors have also engaged in financialisation instead of expanding their businesses.

The effect of these changes has been to significantly shift power in society much more strongly towards the bosses. Globalisation has restructured the working class completely, and broke it up into all kinds of new divisions, and lessened its ability to struggle and resist. This has further strengthened the class power of the bosses.

After the summary presentation, participants discussed how their communities have responded to the effects of globalisation. These have included marches, illegal occupations of land, demonstrations, resisting evictions and general mass mobilisation.

This was followed by a last session in which participants discussed ways in which advice offices could respond to the effects of globalisation on their communities. Suggestions included challenging the underlying causes to problems, taking a more collectivist, organising approach to resolving such problems, engaging more actively in widespread community education, using community newsletters and community radio, and linking up with community campaigns.

In their assessment of the workshop, participants argued that globalisation should become a standard course at the School that all participants should attend.

Building Abundant Communities

Dr. Rama Naidu
Democracy Development Programme (DDP)
28 & 29 January 2016

Introduction

The present structure of community is one that markets fear, poverty and deficit. Engagement with those in power has resulted in a dependency syndrome that has disempowered community voices and systematically destroyed the social fabric that once existed. For example, local authorities are usually telling communities what type of houses they are going to get. Communities were never asked or probed by any one as to what kind of houses would suit them best, although there are unspoken gifts in the communities that – if unlocked - might contribute in building better, healthier communities. Communities get told how poor they are and what they lack. This ends up demoralising them and makes them believe they are poor and inferior and that they must succumb to the authorities. It creates a poverty mindset. What can we as community based paralegals and community organisers do differently? This workshop focused on how a different way of interacting with people, which is called ‘The Art of Conversation’ will help in building more abundant communities.

The Art of Conversation

The problem in communities (and in the world at large) is that the notion of “I” is often stronger than the notion of “we”. It is often about what I want and not about what “we” need as a community. If one would apply the following principles of the Art of Conversation, this can change dramatically:

- **Listen**
When building abundant communities, it is important to shut up and listen to other people to hear what they have to say. This way you may discover a lot of talent in the communities you serve that might otherwise have gone unnoticed.
- **Enquire**
It is imperative to enquire when engaging with communities. You may have researched the community but you will still need to enquire (ask) so that the community realised that you take them seriously. The point of departure should always be the wisdom that comes from the community.
- **Reflect**
It is also important to reflect before you speak. It will prevent you from saying wrong or hurtful things.
- **Speak**
When you speak, make sure that you speak for yourself. Do not give advice when no one has asked for it. Remember that most people just want to be heard, they are not looking for advice. Speaking too much has been a problem in the communities, people get intimidated by those they respect (and who talk a lot) and in the process they silence their own gifts.

When hosting a community meeting take into consideration the following factors:

- **Invitation** - An invitation is the call to create an alternative future. It should require the participants to commit to something if they come into the room. It must also get the right people into the room. Finally, it must be communicated in a language that people can understand and it must have a clear date, time and venue.
- **Ownership** – It should ask people to take ownership of what they have done to contribute to the complaint or current challenge
- **Commitment** – It should ask people what they will commit to? What promise will they make? What is the cost of that?

The facilitator explained about little things that participants take for granted when calling meetings in their communities, which result in poor turn out (of youth in particular). The language used to invite people, the timing that will accommodate everyone and the commitment that all community members must uphold when coming to meetings are really important issues to consider.

High energy levels & excellent mood

The facilitator used different strategies to teach. He first changed the sitting arrangement, so that participants could see each other. He also used group discussions and asked participants to report on behalf of the group. There was dialogue around the issue of xenophobia and an exercise where participants were asked to draw up an invitation to their respective community for a meeting about youth unemployment. Another strategy used by the facilitator was that of allowing individual participants to vent their community challenges and later participants shared their stories and actually tried to figure out how to resolve issues that were common in different communities.

During the dialogue about xenophobia, a participant shared that she took part in agitating the community against foreign nationals because she strongly believed that they were part of the problem. It was very profound to have someone taking ownership of her actions whether they were good or bad.

During another exercise it was discovered that members of the community do not understand Integrated Development Programmes (IDPs), although these forums are so important as this is where issues of development are discussed. As a result there was consensus that from now on, participants should attend these meetings so they will be more effective in their community advice offices.

The mood and energy level in this particular workshop were amazing. The mood was excellent and the energy level was high throughout the day. Even though all participants were contributing, there were those participants who wanted to dominate. Here the facilitator once again reminded them that they must watch their airtime and he emphasized that what happens in the workshop is a true reflection of what is happening in the communities where those with small voices are being over-shadowed by those with a stronger voice and as a result those with a small voice become inferior and they are even afraid to speak out and share important inputs that might assist their communities.

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