



# **“To Whom Do The People Take Their Issues?”**

## **The Contribution of Community-Based Paralegals to Access to Justice in South Africa**

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Legal Vice Presidency  
The World Bank

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ADR	Alternative Dispute Resolution
AGM	Annual General Meetings
AJC	Access to Justice Cluster
ANC	African National Congress
AULAI	Association of University Legal Advice Institutions
BCLR	Butterworths Constitutional Law Reports
CALS	Centre for Applied Legal Studies
CAO	Community Advice Offices
CCJ	Centre for Criminal Justice
CCMA	Commission for Conciliation, Mediation and Arbitration
CLRDC	Community Law and Rural Development Centre
CMAP	Community Monitoring and Advocacy Programme
DSD	Department of Social Development
DJCD	Department of Judicial Affairs and Constitutional Development
FRIS	Fund-Raising Incentive Scheme
IDASA	Institute for a Democratic Alternative in South Africa
KZN	KwaZulu-Natal
LASA	Legal Aid South Africa
LHR	Lawyers for Human Rights
LPB	Legal Practice Bill
LRC	Legal Resources Centre
MEC	Member of the Executive Council
NADCAO	National Alliance for the Development of Community Advice Offices
NCBPA	National Community Based Paralegal Association
NGO	Nongovernmental Organizations
NPI	National Paralegal Institute
NWAJC	Northwest Access to Justice Cluster
OCP	Office of Consumer Protection
PAC	Pan Africanist Congress of Azania
POWA	People Opposing Women's Abuse
SAHRC	South African Human Rights Commission
SAIRR	South African Institute of Race Relations
SANCO	South African National Civic Organisation
SASSA	South African Social Security Agency
SAQA	South African Qualifications Authority
SCAT	Social Change Assistance Trust
SERI	Socio-Economic Rights Institute of South Africa
TRC	Truth and Reconciliation Commission
UDF	United Democratic Front
UKZN	University of KwaZulu-Natal
ZACC	Zabalaza Anarchist Communist Federation

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Paralegals provide a crucial link to justice services and legal redress in South Africa, particularly for the rural poor. Although post-Apartheid constitutional reforms guaranteed a broad range of rights and benefits to all South Africans, including the right to legal assistance, accessing many of these benefits remains a challenge for those who live in remote areas and those who cannot afford legal representation. Community-based paralegals fill this gap by providing dispute resolution and legal support that is both geographically and financially accessible and informed by a deep understanding of the social issues and everyday challenges facing their clients. Despite the prevalence and importance of paralegals in the South African justice sector, their role remains largely underformalized and understudied. This report seeks to address this gap by providing a broad analysis of the current state of the paralegal sector. It begins with a historical overview of paralegal services in South Africa from the apartheid period to the present. The study then maps the current state of the paralegal sector, and provides detailed information on the structure and function of key organizations that provide paralegal services. Through an analysis of twelve case studies of paralegal-assisted cases, the report identifies facilitating and hindering determinants of CAO functions at both the institutional and organization level.

It was a routine home visit to Ntabamnyana village at Inkomba Farm in Greytown by the paralegal at Mooi River Community Advice Office, Margaret. Margaret had heard that an elderly woman in the community, Agnes, was having trouble accessing her social grant and therefore could not get a wheelchair. Leaving the advice office car by the side of road, Margaret walked for two hours to the remote mountain village in the heart of the

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<sup>1</sup> Description of a paralegal: “Simply ask, ‘where and to whom do the people take their issues?’ – that person is the paralegal” by Greg Erasmus, former National Coordinator of the National Alliance for the Development of Community Advice Offices (NADCAO), interview, Johannesburg, January 25, 2011.

<sup>2</sup> Cofounder and former Executive Director of the Socio-Economic Rights Institute of South Africa (SERI), and Visiting Senior Fellow, School of Law, University of the Witwatersrand, Johannesburg. We would like to acknowledge the assistance of Winnie Kubayi (Director of the Centre for Criminal Justice [CCJ]) and Langa Mtshali (Director of the Community Law and Rural Development Centre [CLRDC]), and to warmly thank them for granting us access and facilitating visits to their branch advice offices in KwaZulu-Natal. We are also grateful to Schalk Meyer (Director, AULAI trust) and Crisna Lansberg (Attorney, North-West Access to Justice Cluster) for offering similar support for our fieldwork in the North West Province. We further thank all of the paralegals who agreed to discuss their work with us and who later hosted us in their advice offices to carry out client interviews. Finally, we are grateful to Greg Erasmus (former National Coordinator, NADCAO) for his helpful advice as this research project progressed, and to the World Bank research team for funding this research and for input in the course of the writing process.

<sup>3</sup> Legal Intern, SERI, July 2010 to July 2011; Articled clerk, Withers LLP (London), September 2011–13.

KwaZulu-Natal midlands. When she reached her client's homestead, she began to help Agnes to complete the identity documentation forms required so that she would be able to apply for a grant. Living with Agnes were her daughter, Lindiwe, and granddaughter, Grace, a 17-year-old girl with obvious learning difficulties. During Margaret's consultation, she heard Grace complain to her mother that something had "fallen out again," and that she was in pain. Margaret then witnessed an apparently common event in the household, whereby Lindiwe covered her hand with an empty plastic bag and pushed Grace's prolapsed uterus back inside her.

Speaking with the family, Margaret learned that the injury had been sustained from years of rape and sexual abuse inflicted by Grace's father and uncle, and that Lindiwe and Grace had moved to Agnes's homestead for her safety. Seeing the extreme risk to the child's health, Margaret took Grace to the closest hospital in her car, and pleaded with officials for the next 12 hours in order to get appropriate medical attention, explaining the process and developments to Grace's family at each stage. Proper examination revealed that Grace's reproductive organs were severely infected and would have to be removed. Grace stayed in the hospital for four months to recover from the infection before surgery. However, tragically, when she was finally operated on, she did not wake up from the operation. There was no money for Grace's funeral, so Margaret organized donations from the hospital staff and the Community Advice Office community outreach to bury her. Margaret discussed with the family the idea of laying criminal charges against the father and uncle. Having their agreement, she referred the matter to attorneys at the Centre for Criminal Justice, where a case is being mounted.<sup>4</sup>

South African paralegals occupy a critical, albeit as yet underformalized, space within South Africa's legal and welfare structures. Unregulated and largely undefined, paralegals nonetheless constitute an essential component of the justice and social security systems as they assist poor people in translating hard-fought constitutional rights into accessible and tangible benefits. Often embedded in the frequently far-flung communities they serve and undertaking a wide range of complementary services to help their clients achieve the best resolution to their problems, paralegals regularly operate beyond the capacity, locality, or comfort of the legal profession. Indeed, it is unlikely that a lawyer would even be in the kind of situation described above, let alone know how to address it.

Legal assistance remains a vital component of accessing justice in South Africa. This is particularly so in light of both the relatively recent transition from apartheid rule and the adversarial legal system that takes account of common and traditional law alongside constitutional law. Yet, the country's current judicial system is fragmented and lacks the consistency required for effective cooperation between legal service providers and the efficient use of resources. There are 17,000 lawyers in South Africa, serving 45 million people. But the figure of 17,000 in fact vastly overstates the number of accessible lawyers, particularly given the divided bar, which means that 2,000 of these lawyers are advocates (barristers) who rarely have direct interaction with clients—especially poor ones. Moreover, the legal fees charged by both attorneys and advocates are much too high for the majority of South Africans,<sup>5</sup> and in any case, the vast majority of law firms are situated in the larger towns and cities, with few if any lawyers in small towns or rural areas. Thus the cost and distance required to physically access lawyers makes pursuing litigation an overwhelmingly impractical option.

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<sup>4</sup> This is a true case study of the intervention of a community-based paralegal, as recounted by Winnie Kubayi, Director, CCJ, Pietermaritzburg, October 13, 2010. Names have been changed to protect anonymity.

<sup>5</sup> SERI's own experience of offering free legal assistance is that clients with a monthly income of R 600 (around US\$67) are frequently charged fees in the region of R 1,500 (US\$168) just for an initial consultation.

Another issue is that although structurally the judicial system is well placed to uphold the promise of the Bill of Rights,<sup>6</sup> there is a disproportionate emphasis on state-oriented institutions and formal legal traditions. Yet much of the hard work of advancing access to social justice is performed by paralegals, who function as much more than merely adjuncts to formal legal aid institutions. This is for two main reasons. First, whereas most lawyers live in urban areas, paralegals live in communities scattered across the country and as such, are well-located geographically to respond to community issues. Second, on the whole, lawyers are less equipped than paralegals to deal appropriately with some of the more complex social issues that arise in poor communities, and especially to tackle these through nonadversarial dispute resolution.

It is clear from anecdotes such as Grace's story above that South African paralegals play a substantive role in helping especially rural poor communities to realize their rights, whether through increasing access to justice or through directly resolving problems. Yet there has been little in the way of qualitative research into the functioning, value, and challenges faced by the paralegal sector. This paper begins to fill this gap by providing an overview analysis of the sector's contribution to democratic consolidation in South Africa in the context of the historical development of paralegal work between 1948 and 2011. It is based mainly on primary research interviews conducted between September and November 2010 with 16 organizations working in the paralegal sector, as well as an evaluation of the work of six Community Advice Offices (CAOs) between January and March 2011 that assessed the contribution of community-based paralegals by tracking specific resolved and unresolved cases.<sup>7</sup>

Section 2 provides an overview of the genesis of South African paralegals, from their origins under the apartheid system until today, showing how their role has changed since the transition to democracy in 1994. The contemporary paralegal sector is mapped out in section 3, which describes where and how paralegals currently operate, and outlines the current governance, funding, and support structures. Having mapped this diverse sector, the remainder of the examination focuses on CAOs, as they have played the most unique role from a community-based perspective. Thus sections 4 through 6 investigate the work of CAOs, evaluating their impact on clients and communities and assessing how various factors either facilitate or hinder their capacity to fulfill their potential in South Africa. In section 4, the results of the case-tracking exercise are presented, pulling out the critical factors in the successes or failures of each case, and sections 5 and 6 provide an analysis of the facilitating and hindering determinants of CAO functions, both at the institutional (section 5) and organizational (section 6) levels, that are reflected in the cases and research more generally. Conclusions are drawn in section 7.

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<sup>6</sup> South Africans have recourse to the small claims court, consumer court, land claims court, the Commission for Conciliation, Mediation and Arbitration (CCMA), and the labour court, as well as the criminal and civil courts at various levels. In parallel, disputes are resolved within chiefs' courts in rural areas. Complaints can also be submitted to the Public Protector, the Commission for Gender Equality, the South African Human Rights Commission, and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. However, regarding these Chapter 9 institutions, most are weak, dysfunctional, and/or fractured by in-fighting, and they do not offer a real option for most poor people in addressing problems. Recently, though, there have been some signs that the Public Protector's office has been energized by the appointment of Thuli Madonsela as Public Protector in 2009. The office has become one of the beacons of hope regarding public accountability in South Africa, with Madonsela herself exhibiting much courage and determination in the resolution of complaints regarding state administration.

<sup>7</sup> In order to safeguard anonymity, we have not identified individual clients or paralegals that we observed during the case-tracking exercise. Those paralegals we interviewed outside case-tracking, who were happy to speak on record, have been quoted directly.

The South African paralegal movement has a long history that is intimately linked to first, the historical context of the apartheid legal order and subsequently, the ongoing struggle to consolidate democracy in South Africa. The majority of South African CAOs were established between the 1960s and the 1980s in response to the increasingly oppressive apartheid state, buttressed by a racist legal order oriented toward the political and economic dominance of the white minority.

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Between 1948 and 1990, the apartheid government's unfettered adherence to the doctrine of parliamentary supremacy created an "omnipotent law-making machine" that was "able to ride roughshod over individual liberty without fear of judicial obstruction."<sup>9</sup> This debasement of the legal system endorsed a carefully constructed legal order based on racial separation in which a host of legislation that governed the personal, social, economic, and political status of the black person, based on an elaborate racial classification scheme whereby "Coloured" or "Bantu" classification meant automatic relegation to an inferior racial stratum with lesser rights.<sup>10</sup>

Under the apartheid system, black people were allocated separate facilities and inter-racial relations were illegal. A series of "pass laws" confined black people to tribal homelands, forcing the removal of thousands of people from white areas and their resettlement on land that lacked proper amenities and was frequently at a great distance from sources of employment. The "dom pass," an identity book that had to be produced on demand, was an apartheid tool that gave rise to the most arbitrary and pernicious administration of the law. Additionally, the best-paid skilled jobs were reserved for whites, and black children received inferior education, with just R 39.53 per capita expenditure for black students in primary and secondary schools compared to R 605 spent on each white child.<sup>11</sup> Various statutes<sup>12</sup> (known as "influx control") controlled both the number of black people allowed into urban areas and their behavior when they were there. The holding of any meeting or social gathering attended by a black person in an urban area could be prohibited by the authorities, whether on public or private property. State agents also had the power to attend any such gathering when they believed internal security was being threatened. Beyond this institutional structure were the widespread manifestations of informal repression, such as arbitrary arrest, solitary confinement, torture, and extra-judicial killings—quite apart from the high rate of lawful executions of political opponents by the state.

It was against this backdrop of exclusion, injustice, and repression that anti-apartheid movements and organizations were established.<sup>13</sup> Similarly, CAOs were formed by community

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<sup>8</sup> This section draws on a seminal book about the apartheid legal order, John Dugard, *Human Rights and the South African Legal Order* (Princeton NJ: Princeton University Press, 1978), as well as interviews with all the paralegal organizations and experts in this study.

<sup>9</sup> *Ibid.*, 35.

<sup>10</sup> *Ibid.*, 55–62. By the term "black" we refer inclusively to all nonwhite people.

<sup>11</sup> *Ibid.*, 84. This equates to US\$5.99 and US\$91.73, respectively.

<sup>12</sup> Some of the most notable of these include the Bantu Land Act (1913), which designated 13 percent of South African land as "reserves" or black homelands; the Bantu (Urban Areas) Consolidation Act (1945), which established strict controls over how long and the purpose for which a black person could be present in an urban area; and the Group Areas Act (1950), which demarcated separate race areas in towns and cities.

<sup>13</sup> These include the Pan Africanist Congress of Azania (PAC), established in 1959, and the Black Consciousness movement founded in the mid-1960s in the context of the banning of the African National Congress (ANC) and the PAC on April 8, 1960 (following the Sharpeville massacre of civilians by police).

members out of the need for a space in which to mobilize against the apartheid regime, as well as out of a profound distrust of a judicial system that endorsed racially exclusive legal structures. For blacks, the law was not “a body of rules which their elected representatives [had] conceived in Parliament, but a repressing system imposed without consultation and enforced by an array of instruments of coercion – the army, the police, and the legal administration machine.”<sup>14</sup> Some CAOs were, in fact, initially conceived as African National Congress (ANC)<sup>15</sup> constituency offices, helping to address the specific injustices of the time, such as the problems of being politically associated, the *dom pass*, and the consequences of forced removals.

Alongside the CAOs, Legal Aid South Africa (LASA) was founded in 1969 as a state-funded independent statutory body (established under the Legal Aid Act [1969]) particularly to provide means-tested free legal assistance via a *judicare* system (involving state-funded private counsel, instructed on a referral basis) for defendants in political trials. It was established because the government had received criticism following the banning of the South African Defence and Aid Fund for conducting such trials.<sup>16</sup> However, the LASA scheme was largely ineffective until the new democratic government widely extended its budget. In 1975–76, only 810 applications were approved for legal aid in criminal cases.<sup>17</sup> Thus for the most part, black South Africans relied on CAOs and those limited elements of progressive white legal society that offered legal representation to blacks. During the late-1970s, the latter opportunities were consolidated into a few human rights legal organizations, such as the Centre for Applied Legal Studies (CALS) (1978) at the University of the Witwatersrand, the Legal Resources Centre (LRC) (1979), and Lawyers for Human Rights (LHR) (1979), which took on mainly civil and political rights cases to advance social justice in South Africa.

During the late 1970s (and throughout the 1980s and early 1990s), CAOs worked collaboratively with organizations such as CALS, the LRC, and the LHR in their attempt to advance what few rights they could on behalf of black people.<sup>18</sup> Collectively, they attempted to rally covertly with other civil society organizations at a time when such community activities were viewed with hostility by the state, and in response, CAO staff were frequently subjected to harassment and generally operated in a toxic environment.<sup>19</sup>

One of the most important organizations that networked with and supported the work of CAOs in the apartheid era was the Black Sash, which was founded just seven years after the formal advent of apartheid and, as elaborated on in section 3 below, is still playing an important role as a community-based paralegal, state monitoring, and advocacy organization today. The Black Sash was established in 1955 by six white women as a membership-based (and membership-

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<sup>14</sup> Dugard, *Human Rights*, 391.

<sup>15</sup> The ANC was formed in 1912 as a political organization (albeit unable to become a political party) for black people. Banned in 1960, it continued to operate underground and in exile until being unbanned in 1991.

<sup>16</sup> The South African Defence and Aid Fund was established in 1956 (then called Christian Action) to assist political activists and their families by paying for legal representation for accused persons in political trials, as well as providing financial assistance to the families. After being banned in South Africa, it continued as the International Defence and Aid Fund based in London.

<sup>17</sup> Dugard, *Human Rights*, 246.

<sup>18</sup> Further civil society organizations were established in the late 1980s, including the Institute for a Democratic Alternative in South Africa (IDASA) (1987), Earthlife Africa (1988), and People Opposing Women’s Abuse (POWA) (1989).

<sup>19</sup> For instance in 1989, the Langa and Nyanga (townships in Cape Town) branches of the Western Cape Hostel Dwellers Associations were firebombed and rebuilt. The offices of funding partners such as the Social Change Assistance Trust (SCAT), established in 1984 and overviewed in section 3 below, were also vandalized and subject to arson attacks.

funded), volunteer, anti-apartheid activist organization. The name refers to the black sash that the activists wore across their chests during protests. Initially, the group's advocacy work centered on advancing a nonracial, morality-based vision within white society that questioned the validity of several pieces of apartheid legislation by holding mass meetings and vigils and launching petitions. From 1956 to the early 1960s, the Black Sash approach focused on public education twinned with protest action. At the same time, the Black Sash set up CAOs in urban areas to assist black people who contravened the apartheid laws, particularly those that restricted freedom of movement. The CAOs provided support and free paralegal services, addressing concerns around housing, unemployment, pensions, influx control, and detention without trial. Between the 1960s and the 1980s, Black Sash CAOs flourished, and provided evidence with which the group informed its public protests and its monitoring of government policy, legislation, and action, as well as court activities. Through the CAO network, the Black Sash also monitored and recorded protests, rallies, arrests, detentions, and deaths.

During the 1980s, as political opposition mounted and insurrectionary fervor escalated in the wake of successive declarations of states of emergency by the government (1985–89), CAOs sprang up across the country in the homes of community leaders. These CAOs tackled immediate manifestations of apartheid rule such as forced evictions. For example, in 1986, the Logra CAO in the Western Cape was established to assist residents who had been forcibly removed from urban areas in Cape Town to the Cape Flats, monitoring unrest in the area and supporting the families of political detainees and those on trial. The Bhongolethu CAO in Oudtshoorn was also set up that year to assist community members with claims against the Minister of Law and Order regarding farm evictions, as there was no legislation to protect workers. At the same time, the George Civic Association organized residents in opposition to forced removals, and CAOs such as the Grahamstown Rural Committee investigated and publicized the conditions of resettled communities through a newsletter and sympathetic media contacts. Over and above dealing with crisis interventions, CAOs focused more broadly on the end-goal of ending the apartheid system. Notwithstanding the dangers of being allied to anti-apartheid forces, CAOs networked themselves with political organizations such as the South African National Civic Organisation (SANCO) and the United Democratic Front (UDF).<sup>20</sup>

The range of problems black people faced as a result of apartheid conditions exposed community-based paralegals to a diverse set of problems and allowed them to acquire a wide skill set, including the ability to provide therapy, trauma counseling, and resource procurement. For example, in 1988, the Woodstock CAO in Cape Town initiated an anti-Group Areas organization in the area (the 1950 Group Areas Act stipulated separate residential and business sections in urban areas, one effect of which was to exclude black people from living in most developed areas), and the office provided counseling to residents under threat of removal. There were further distinct problems in rural areas; a great deal of suffering stemmed from the breakdown of family structures, which was in turn caused by the migrant labor system, as women and children were left in rural areas while men went to the cities for work.<sup>21</sup> Organizations such as the Community Law and Rural Development Centre (CLRDC) were established at this time to help rural populations access the scant resources available to them

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<sup>20</sup> SANCO was established in 1992 to represent affiliated organized community groupings around the country. It aimed to advance political and socioeconomic change for black communities in South Africa. The UDF was formed in 1983 under the shadow of the banned ANC, as a progressive front of community groupings and organizations united under the banner of forging a nonracial, nonsexist, and democratic South Africa. It ceased operating when the ANC was unbanned in 1991. See, for example, <http://www.nelsonmandela.org/udf/>.

<sup>21</sup> In 1985, the migrant labor system was at its highest, with 1,833,636 South Africans classed as migrants. Migrant mineworkers were also the first group of heterosexual men to test HIV positive in large numbers.

from the Bantu or homeland administrations. In 1989, when the CLRDC was founded, it began providing access to information and social justice services to about 1 million people living in Natal and the Eastern Cape.<sup>22</sup>

The CAO movement gained an important avenue for funding through the establishment of the Social Change Assistance Trust (SCAT) in 1984. Drawing funds from the Norwegian government channeled through Norwegian Church Aid, SCAT initially provided funding to the Citizens Advice Forum, then extended its operations in the late 1980s to fund individual CAOs. By 1986, SCAT funded 26 CAOs and rural development organizations in the Cape and Natal. By 1990—and despite some diluted reforms instituted by the apartheid regime to try to quell the rising tide of resistance—the combined weight of community mobilization and international economic disinvestment had forced the government into a stalemate, as a result of which it initiated a transitional period of negotiations toward democratic change. (More information about these and other organizations mentioned can be found in section 3.)

The transitional period was defined by heightened political jostling as the old apartheid order conceded political power but sought to consolidate economic leverage, while the ANC struggled to gain political control.<sup>23</sup> It was a time of unrest, intense political violence, and police brutality. At the same time, it brought a new surge of civil society organizations, including paralegal organizations, which were set up to support the transitional process. For example, the Centre for Criminal Justice (CCJ), which was established in 1989 as a research unit affiliated to the Faculty of Law at the University of KwaZulu-Natal (UKZN), focused on investigating the role of criminal justice for those charged with political violence under the apartheid regime. Newly formed individual CAOs also had landmark cases. For instance, the Berlin CAO in the Eastern Cape was formed in 1991 when the head of the Ciskei government (Ciskei was a black homeland in the southeast region of the country) decided that the old and sick would no longer receive social grants, and community leaders formed a CAO to fight the ruling. They mounted litigation, and with the help of the Grahamstown LRC, they took the Ciskei government to the Supreme Court and won their case, resulting in the reinstatement of monthly grants for over 3,000 people.

In response to the changing environment, paralegal organizations began to shift their focus, for the first time looking to a more democratic future with a more forward-looking approach. The Black Sash, for example, monitored the Convention for a Democratic South Africa negotiations and pushed for a new constitution. They also formed LegiWatch, a group of women who monitored legislation in Parliament. In addition, throughout the CAO network, the Black Sash provided voter training for the first democratic elections in 1994. The CLRDC also shifted its strategy to one of legal training and education, trying to bridge the divide between the Amakhosi, tribal authorities who have no formal legal training but who implement customary law, and the local magistrates, helping the traditional leaders to better understand the common law system, especially in the context of newly emerging human rights standards and the advent of formal democracy.

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<sup>22</sup> Statistics courtesy of SCAT records, documented in Margie Orford, *Rural Voice: The Social Change Assistance Trust 1984-2004, Working in South Africa* (Cape Town: David Phillip Publishers, 2004).

<sup>23</sup> Hein Marais, *South Africa: Pushed to the Limit: the Political Economy of Change* (Claremont: UCT Press, 2011).

We don't really taste the new South Africa yet. We can see it, but we don't taste it.<sup>24</sup>

Gideon Lottering, Chairperson of the Prince Albert Advice Office, Western Cape

The historic democratic election in April 1994 ushered in an as yet unfinished period defined by three linked formal processes. First, a wholesale project of law reform, which worked to repeal and replace apartheid legal frameworks and institutions with democratic ones. Second the Truth and Reconciliation Commission (TRC), which sought to settle past human rights abuses. And third was the related mission to advance the civil and political, as well as socioeconomic, incorporation of the majority of South Africans into the mainstream state, economy, and society.<sup>25</sup> These processes and their objectives have enjoyed varying degrees of success.

The first process of legal and institutional reform has been relatively successful. There has been wide-ranging reform of laws, policies, and institutions to bring them in line with the democratic, rights-based dispensation. The final Constitution was adopted in 1996,<sup>26</sup> and is considered to be one of the most progressive constitutions in the world (not least for prohibiting unfair discrimination based on a wide range of listed grounds, including sexual orientation),<sup>27</sup> and government departments were established that acknowledged their human rights mandate. One of the founding objectives of the Constitution is the espousing of “human dignity, the achievement of equality and the advancement of human rights and freedoms.”<sup>28</sup> The Constitution also entrenches the right of access to courts by guaranteeing everyone’s 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.”<sup>29</sup> It additionally goes some way towards recognizing a right to legal assistance at state expense by establishing that every detained, arrested, or sentenced prisoner has the right “to have a legal practitioner assigned to the detained person by the state and at state expenses, if substantial injustice would otherwise result.” Moreover, it provides for a form of legal aid (outlined in section 3.1), mainly for criminal issues.

But the second two processes have been less successful. The TRC has been criticized for not achieving reconciliation between whites and blacks, and it has been suggested that the TRC process actually exacerbated race relations, without promoting the kind of soul-searching and apologies expected from whites. If it was additionally hoped that the TRC might contribute to a safer, more secure society, such hopes have been dashed in that South Africa remains one of the most violent and unequal societies in the world, pointing to structural shortcomings of the third

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<sup>24</sup> Orford, *Rural Voice*, 56.

<sup>25</sup> Apartheid’s socioeconomic legacy was one where two worlds existed in one country. A rich, overwhelmingly white realm, with first world services and amenities, and a poor, black world characterized by poverty, un- or underemployment, and economic marginalization. Thus, in 1994, while virtually all white people had adequate access to water and sanitation, approximately 12 million black people did not have access to clean drinking water and 21 million black people did not have adequate sanitation. As recognized by the 1994 Reconstruction and Development Programme (the post-apartheid government’s first economic development policy), “access to water resources is dominated by a privileged minority while the majority of the population enjoy little or no water security” (paragraph 2.6.1, p. 28).

<sup>26</sup> Constitution of the Republic of South Africa Act 108 of 1996 (Constitution).

<sup>27</sup> Section 9(4) of the Constitution outlaws direct or indirect unfair discrimination based on “one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

<sup>28</sup> Section 1(a) of the Constitution.

<sup>29</sup> Section 34 of the Constitution.

process. Indeed, as of early-2013, deep social and economic fractures remain, and in some instances, have worsened.

Gender-based violence has long been widespread<sup>30</sup> in South Africa and socioeconomic inequality is increasing. Approximately 50 percent of South Africa's population of 49.9 million live below the poverty line. Unemployment is estimated at 25 percent of the economically active population;<sup>31</sup> 51 percent of South Africans aged between 15 and 24 are unemployed,<sup>32</sup> and this is highest among black women (63 percent). The fact that black youth have not been properly incorporated into the productive economy is clear from the fact that 30 percent of the population currently receives social grants. While expansion of social security provides a vital safety net for those in dire need, this extent of grant dependence is financially unsustainable; at a local level, for instance, in towns such as Lady Frere in the Eastern Cape, the entire population of 5,000 people and 85 surrounding villages depend on social grants.<sup>33</sup> The creeping sense of disillusionment with the liberation government has now also, after years of nondelivery in public service, firmly taken root. The ANC's failure to deliver on socioeconomic rights in the terms of the Constitution has dashed hopes of ameliorating long-standing problems of adequate housing, electricity, and water and sanitation services, as well as better education, health care, and social security, an accountable police force, and decent work opportunities.

Moreover, notwithstanding the formal legal and policy frameworks, there has been a gradual erosion of human rights principles over the last decade, in the form of HIV/AIDS denialism, a preoccupation with cost-recovery for basic services, and a general lethargy in state institutions regarding the fulfillment of human rights obligations. At the sharper end of this retreat from the promise of the early "rainbow" days were the government's proposals during 2010 to pass protection of information legislation that would have undermined public access to information and established a media tribunal to regulate the media. While the tribunals seem to have been unofficially dropped from the agenda, the so-called "Secrecy Bill" continues to proceed through the parliamentary process.

This somewhat conflicting context of formal spaces and conducive frameworks on the one hand, and entrenched structural barriers alongside increasing failures of governance and service delivery on the other, has led to a burgeoning of civil society organizations. These include nongovernmental organizations (NGOs), trade unions, and social movements such as the Anti-Privatisation Forum, the Informal Settlements Network, Landless People's Movement, and Abahlali baseMjondolo (shackdwellers' movement). There has also been an increased demand for legal advice, training, and representation within the new democratic dispensation. After 1994, although all South Africans technically had all sorts of rights (civil and political, as well as socioeconomic), it remained difficult to actually access them, providing a new role for paralegals to attempt to translate the new Bill of Rights into reality. Indeed, as people gradually become aware of their rights (in no small part due to the educational work of paralegals) there has been an ever-growing need for paralegal assistance in claiming them.

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<sup>30</sup> A Medical Research Council study recently found that 50 percent of all women who are murdered in South Africa are killed by men with whom they have an intimate relationship.

<sup>31</sup> South African Institute of Race Relations (SAIRR), "South Africa Survey 2008/2009" (Johannesburg: SAIRR, 2009), 193.

<sup>32</sup> See the website of the South African Institute of Race Relations, <http://sairr.org.za/>. In contrast, only 21 percent of white youth are unemployed.

<sup>33</sup> Orford, *Rural Voice*, 37.

While access to justice has significantly improved with the augmentation of LASA, which has expanded as one of the institutional pillars of the new constitutional order, the access has not expanded to meet the vast legal and quasi-legal needs of the majority poor, particularly in rural areas and generally with regard to civil claims.<sup>34</sup> It is in this context that CAOs have redefined their role as pioneers of development, as translators of the Bill of Rights, and most particularly as conduits of justice for people in far-flung rural areas. At the same time, probably in response to operating in the more nuanced post-1994 context when the (ANC-dominated) government was sometimes part of the problem for people in poor communities, many CAOs also began to distance between themselves from the ANC and to become more politically neutral—or at least to portray themselves as such.

In addition, there have been structural changes in the paralegal sector during this period. For example, to optimize reach and efficacy, from 1994 to 1996 the National Community Based Paralegal Association (NCBPA) was established as a national CAO network, thereby increasing knowledge sharing and communication among paralegals on the ground.<sup>35</sup> The Black Sash also evolved during this time, in form and function. Between 1994 and 1999, the Black Sash helped to draft legislation and contributed to parliamentary standing committees looking at legal reform. It eventually became a professional NGO rather than a membership organization, with full-time paid staff and a board of trustees.<sup>36</sup> As discussed in section 3.2 below, the Black Sash has developed its own human rights programs, implemented them through rights education and advocacy, and monitored the impact of legislation through its regional centers.

Organizations such as the CCJ also adopted a new operating structure after the end of apartheid, shifting its focus from the treatment of political prisoners to becoming a protector and defender of rights, particularly with respect to violence against women and children.<sup>37</sup> The organization realized that a new approach was required, and that the South African Police Service was struggling to grapple with such crimes.<sup>38</sup> The CCJ thus began a pilot scheme to train civilians as paralegals, with specific focus on how to counsel and take statements from someone who has suffered a trauma in a confidential, private space, teaching the victim about his or her rights at each stage and arranging follow-up support. At the end of the first month of this scheme, the first paralegal trained had been involved in 35 cases, and by the end of six months, this figure was 100. This collaborative model led to an influx of reporting, and established an iterative program between the CCJ, police, magistrates' courts, and traditional and community leaders.<sup>39</sup> SCAT also shifted to focus solely on rural areas and to phase out its funding of urban-based service organizations, on the basis that rural people's exclusion from wealth and power would

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<sup>34</sup> Civil claims, by which the vast majority of socioeconomic rights issues are administered, still make up only 7 percent of LASA's caseload.

<sup>35</sup> The national coordination facilitated by the NCBPA was lost when the organization folded in 2003. However, a new CAO network agency, the National Alliance for the Development of Community Advice Offices (NADCAO), was set up in 2007 and is profiled in detail in part 3.3.

<sup>36</sup> Tim Lebert and Umhlaba Associates, "Holding Government to Account: Advocacy in an Emerging Democracy: the Story of the Black Sash" (New York: The Atlantic Philanthropies, 2009). Similarly, by 1999 increasing numbers of CAO staff and volunteers did not come from an activist background of working for the struggle and instead demanded a living wage and benefits.

<sup>37</sup> Interview with Winnie Kubayi, Director, Centre for Criminal Justice (CCJ), Pietermaritzburg, October 13, 2010.

<sup>38</sup> The police failure to tackle violent crime and particularly domestic/gender crime relates generally to problems with transforming the service from an apartheid security apparatus to a public safety service, and also to poor investigative, detection, and reporting capacity. But it also relates to the specific and universal difficulties of policing domestic and gender-based crimes because of victims' reluctance to report.

<sup>39</sup> Interview with Winnie Kubayi, Director, Centre for Criminal Justice (CCJ), Pietermaritzburg, October 13, 2010.

likely be perpetuated unless actively challenged, and that the positive changes following the democratic election would come more slowly to rural than urban areas.<sup>40</sup>

In South Africa, paralegals are not as strictly or formally defined as they are in many other countries. Occupying a variety of terrains, some work as unpaid volunteers, others on a salaried basis; some work closely with lawyers, while others operate totally independently; and some hold tertiary education paralegal qualifications, while others learn on the job, building experience through years in community activism and service. The trait they share is their direct legal and quasi-legal interface with the clients and communities they serve. Given their largely amorphous character, paralegals are here defined as people who attempt to resolve individual matters for their clients. It is also useful, as a broad-brush definition, to look at the client's perspective of paralegals. In the words of Greg Erasmus, "Simply ask where and to whom do the people take their issues? That person is the paralegal."<sup>41</sup>

Looking generally at the things paralegals do, what sets them apart from many other service providers is how they seek to resolve a multitude of wide-ranging community issues, straddling the legal (criminal and civil) and social welfare systems. As Vivek Maru identifies, "The substantive direction of their work is determined by whatever problems community members bring to them."<sup>42</sup> In terms of techniques, paralegals commonly use alternative dispute resolution (ADR) techniques of mediation and negotiation to establish a holistic approach to help solve people's problems within families, and with traditional and state authorities. Paralegals investigate cases that require representation by an advocate, and connect people in their communities to trained lawyers who may be able to help them in this capacity, smoothing the litigation process by helping to draft witness statements. Where necessary, paralegals will also refer people to other sources of assistance, whether local government departments, health clinics, or welfare agencies. They create a network of information providers and referral systems for their communities, often with NGOs and other paralegal organizations. In addition to responding to individual and community problems, paralegals take an active stance to improve local people's legal literacy, engaging in peer-to-peer education techniques to better rights education, legislation, and legal processes. They also mobilize people around pressing community issues to lobby for changes to be made by state powers.

To carry out these tasks, paralegals hone skills in counseling, administration, monitoring, communications, and networking, as well as the practical legal skills of drafting letters and gathering evidence. They also develop a knowledge of basic laws and procedures relating to civil actions, arrest, detention, and bail. Paralegals operate in this vein in South Africa within a variety of organizations, as well as independently. Thematically, while covering a wide variety of justice-related work, South African paralegals primarily deal with concerns involving domestic violence and access to social grants. As outlined above, these areas of work relate to two of the most serious remaining fault lines in South Africa: endemic violence in the home and structural unemployment, meaning that a very high proportion of South Africans rely on social

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<sup>40</sup> Orford, *Rural Voice*, 13.

<sup>41</sup> Interview with Greg Erasmus, former National Coordinator, NADCAO, Johannesburg, January 25, 2011.

<sup>42</sup> Vivek Maru, "Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide," *The Yale Journal of International Law* 31, no. 427 (2006): 428–76.

grants to survive.<sup>43</sup> It is thus no coincidence that these are the most common cases dealt with by paralegals.

This paper distinguishes between four categories of paralegals. The first is the most formalized category, found specifically in private law firms, trade unions, or government departments, where they service the needs of the agency they work for rather than the general public. Although private law firms tend to utilize candidate attorneys rather than paralegals, there are still a few paralegals working in these offices, where they carry out initial consultations, take statements, and make referrals to other organizations. Trade unions also employ paralegals in lawyerly roles, where they use ADR techniques of mediation and negotiation to resolve labor law matters. Additionally, many paralegals are absorbed into municipal government structures, where they may continue to provide primary legal advice to citizens on behalf of the government, but most probably not in a solely paralegal capacity. This paper does not address this category of paralegals.

The second category is those paralegals who serve the public through their work in legal structures (other than private law firms, trade unions, or government departments) where they provide valuable client interface and support services to public lawyers. Notable setups here are the paralegals who work within litigating NGOs and branches of LASA, whose operations are described in section 3.1 below. The third category is the paralegals who work for the Black Sash, an NGO that operates *sui generis* in the South African landscape to advance social security on a quasi-legal frontier and overwhelmingly relies on paralegals. Its paralegal work is outlined in section 3.2 below.

Finally, there are those paralegals who work more autonomously in organizations or arrangements that are primarily about paralegal services *per se* and wherein paralegals take up and resolve matters themselves, referring to lawyers only as a last resort when litigation is necessary. It is here in the CAOs that paralegals contribute the most broadly to the promotion and enforcement of access to justice across South Africa, both through their wide geographic range and the fact that they are often the only legal or quasi-legal option within far-flung rural communities. This category of paralegals is the research focus of this paper, and it is examined in sections 3.3–3.6.<sup>44</sup>

In South Africa, NGOs that undertake public interest litigation quite commonly employ paralegals to work on the frontline of community relations, as the initial client contact and subsequently in support of the NGO's attorneys as cases progress. The LRC is one such NGO

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<sup>43</sup> According to government statistics, for the years 2011–12, there were 15.3 million social grant beneficiaries (out of a total South African population of approximately 49 million), including children, people with disabilities, and the elderly (these are the main social grants); see <http://www.southafrica.info/about/social/436302.htm>. Indeed, in South Africa, there are approximately three times more social grant recipients than taxpayers (there are 5 million registered individual taxpayers in South Africa). Notwithstanding the official statistics, there are serious problems with the administration of the social grant system, with systemic corruption and mal-administration resulting in social grants being unlawfully terminated or delayed, etc., and precipitating the relatively high number of social grant cases brought by paralegals.

<sup>44</sup> It should be noted that, for logistical reasons, we did not examine the multitude of paralegals and CAOs operating outside of any structure or umbrella organization, in terms of which, typically, one- or two-person outfits spring up in local communities and provide assistance with common community problems, often for a small direct fee.

that, as mentioned earlier, has incorporated paralegals into its work since its inception. Currently, the LRC employs seven paralegals in each of its four offices across the country, all except one having worked at the LRC for over a decade. Their time is split between the front desk of the office, where each morning paralegals consult with walk-in clients, and in the litigation department. LRC paralegals are typical of others working in this type of environment in that their training is incorporated into the wider legal training of the organization's staff, giving them the opportunity to be up-skilled and better resourced across the LRC's broad areas of focus. Paralegals in litigating NGOs can therefore provide a high-quality level of service, and paralegals at the LRC build up an expertise over their careers such that their initial consultation with clients is often sufficient to resolve the matter. However, more complicated issues are handed over to the attorneys. Paralegals generally do not direct the outcome of a case but rather facilitate the court process by serving and filing papers, commissioning affidavits, and giving feedback and explanations to clients. Paralegals in the LRC also join their colleagues in giving community training workshops based on emergent trends or the NGO's strategic focus issues.

LASA is the largest employer of paralegals in the country, with 185 paralegals working across its various branches. Funded by the Ministry of Justice with a R 900 million budget for 2010,<sup>45</sup> LASA has its national headquarters in Johannesburg and six regional head offices. LASA operates through 64 justice centers, where legal aid applicants go for legal assistance as they would to a law firm, and it is staffed by attorneys, candidate attorneys, and paralegals, with 55 satellite offices, including suboffices in rural areas that are too remote to be serviced by the nearest justice center. One hundred fifty paralegals work within the justice centers and satellite offices; these vary in size, with sometimes two or three paralegals in each. There are 12 paralegals employed by LASA to consult with prisoners awaiting trial, a case flow management project aimed at reducing overcrowding in prisons by providing legal representation to people who cannot afford it, and thus formalizing the case so that it can proceed to court. Nine paralegals work within the LASA high court unit, assisting at an administrative level with post-sentence prisoners who want to appeal or file petitions about their case.

Finally, 14 paralegals work in the LASA call center, which was launched in June 2010 to overcome the barrier to access to justice due to onerous long distance transport costs, providing legal advice over the phone with subsequent allocation to the nearest justice center or satellite office if necessary. This last group of LASA paralegals is the most highly qualified and received two months of intensive training before the center opened. The training, remuneration, and evaluation of paralegals at LASA is formalized in their performance contracts, by which they must undertake a certain number of hours of training per year, and according to which they are evaluated every quarter against a specific set of criteria. Entry-level paralegals earn approximately R 8,000 (US\$980) per month.

The presence of paralegals at LASA enables the organization to resolve more client problems than would be possible if the office consisted only of qualified lawyers. A recent survey carried out by LASA found that 80 percent of walk-in clients to justice centers and satellite offices require only initial advice from paralegal staff,<sup>46</sup> a testament to the value of and need for providing a general legal advice service in South Africa. The call center advice line has been very successful in this respect, with a 93 percent rate of internal resolution between August and October 2010. Nevertheless, the paralegals' role remains limited beyond undertaking initial consultations and client means tests. As soon as the application for a legal aid lawyer has been

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<sup>45</sup> A budget equivalent to around US\$1.1 million.

<sup>46</sup> Legal Aid South Africa (LASA) Annual Report 2009/2010, available at [www.legal-aid.co.za](http://www.legal-aid.co.za).

approved, paralegals are not involved in the case file except for evidence gathering and follow-ups with the client. This makes their role more rigid than the paralegals in the Black Sash and CAOs, and it restrains their ability to have a deeper impact. This is coupled with the fact that LASA admits that the organization has limited capacity to render civil legal aid services, with civil matters accounting for just 7 percent of LASA's caseload:

The lack of funding for civil legal aid services has resulted in limited capacity to render civil legal aid services, impacting negatively on the number of clients assisted in civil legal matters as evident from the decline in the number of persons assisted in civil matters. This limited capacity to undertake civil legal aid also results in a limited presence in rural areas making it difficult for clients in rural areas to access legal aid.<sup>47</sup>

LASA acknowledges the negative impact that this dearth in capacity has on access to justice in rural areas. However, the answer probably does not lie in opening more LASA satellite offices, as the expense of opening a fully fledged office cannot be justified for the relatively slight quantity of work that will arise from small remote communities; instead, it would make more sense financially for LASA to use its budget to pay for the set up and training of paralegals in a CAO.<sup>48</sup>

Emerging from a long history of anti-apartheid activism, today the Black Sash offers human rights advice to communities, predominately using paralegals. There are currently seven Black Sash regional offices around the country, in Cape Town, Knysna, Port Elizabeth, Grahamstown, Durban, Pietermaritzburg, and Johannesburg, as well as a national office near Parliament in Cape Town. There are also three Black Sash satellite offices that run two or three times per month in rural locations, enabling clients far from a regional center to speak to Black Sash paralegals about their issues. Donor-funded by the Mott Foundation and the Atlantic Philanthropies, with additional funding from the Foundation for Human Rights and the European Union on a project basis, the Black Sash employs 15 paralegals, two in each regional office apart from Johannesburg, which has three. All paralegals have the paralegal diploma certificate,<sup>49</sup> are part of the way through an LLB degree, or have other such experience; for example, Thandiwe Zulu, Director of the Johannesburg regional office, is a qualified social worker and psychologist. The Black Sash stipulates quite high qualifications as part of its recruitment criteria after an upgrade in 2001 in the quality of service being provided, due to the high number of applications it was receiving from younger generation career paralegals for relatively few positions. The organization also pays relatively well for the sector, with entry-level salaries of around R 10,000 increasing to R 17,000 per month (US\$1,200–2,100).

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<sup>47</sup> Vidhu Vedalankar, CEO of LASA, cited in LASA Annual Report.

<sup>48</sup> Interview with David Mcquoid Mason, Professor of Law University of KwaZulu/Natal, Durban, October 11, 2010.

<sup>49</sup> Two national qualifications for paralegals are currently registered with the South African Qualifications Authority: a one-year National Paralegal Certificate and a three-year Diploma in Paralegal Studies. According to course provider websites, the materials are drawn up in consultation with the South African Institute of Legal Training. The Certificate/Diploma is available as per other South African tertiary qualifications, upon enrollment and payment of fees. The South African Law School (SCAT's course provider—see n. 78 below) and South African School of Paralegal Studies (<http://www.paralegalstudies.co.za/>) run courses, as does the University of Johannesburg, syllabus found here:

[www.uj.ac.za/EN/Faculties/law/coursesandprogrammes/Documents/Paralegal%20Studies%2011%20web.pdf](http://www.uj.ac.za/EN/Faculties/law/coursesandprogrammes/Documents/Paralegal%20Studies%2011%20web.pdf). The fact that this is an expensive course, often geared towards a more corporate angle, confirms the value of the training for community-based paralegals provided by CLRDC/CCJ through the University of Kwa-Zulu Natal (UKZN).

The Black Sash's work is split between providing free legal advice and paralegal support, conducting rights education campaigns to help people access their socioeconomic rights as outlined in the Constitution, and advocating for legislative and policy reform. Broadly speaking, the organization's interventions range across four thematic areas: social security, consumer protection, access to basic services, and access to decent work. The first of these is their largest program, and covers social assistance grants (such as child support and disability grants), and social insurance grants (such as pensions and maintenance grants) owed to people by the Department of Social Development (DSD).

The group also runs advocacy campaigns to make social protection measures more inclusive, for instance for children aged 15–18 and the unemployed, and to make social insurance cover those employed in the informal sector as well as part-time and domestic workers. It also helps clients exercise their consumer rights and promotes credit record access to build a fairer consumer environment. The Black Sash is assessing the impact of the National Credit Act (2005), which, along with the new Consumer Protection Act (2011), aims to protect the public from over-zealous banks and credit facilities by creating stringent conditions for banks and other institutions providing credit and thereby to advance consumer-related rights. Access to basic services is a new area, focused mainly on municipal indigent policies.<sup>50</sup>

More generally in terms of this new mandate, the Black Sash has a memorandum of understanding with the Department of Home Affairs, the DSD, and the South African Social Security Agency (SASSA)<sup>51</sup> to carry out monitoring and report back at a local level on service delivery. The project, known as the Community Monitoring and Advocacy Programme (CMAP), commenced in November 2009 and is run jointly by the Black Sash and SCAT, which together coordinate volunteers nominated by 270 CAOs and community-based organizations<sup>52</sup> to record their observations at service delivery points across all nine provinces over an 18-month period. When the reports come in, these observations are used to access and report on government service delivery in specified state departments as experienced by beneficiaries. Finally, the Black Sash is starting to look at labor advocacy, which currently makes up around 25 percent of its cases. In this regard, it is investigating how to work with unions, as the majority of clients' labor matters relate to union-member disputes.

Across offices and projects, the Black Sash paralegals work in a particular way. They capture trends from their casework and feedback that are entered into a database held at each regional office. These statistics show the prevalence and location of certain issues, as well as the turnover of cases handled.<sup>53</sup> The Black Sash's advocacy strategy is informed by analyzing these case logs, using hard evidence as proof of what the paralegals witnessed on a daily basis rather than relying on rough notebooks. The database is used to identify emerging trends and developments in regard to which the group then lobbies for policy implementation or reform

Through its case management system, the Black Sash is able to analyze trends and mount strategic interventions in a way that most CAOs (discussed below) are not. For example, the Black Sash is currently advocating that the qualifying age for a child support grant be raised to 18 years rather than the current 15 years. An analysis of regional trends can also give rise to a

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<sup>50</sup> Indigency policies are a common means through which municipalities allocate free basic services to low-income households. They are a targeted, means-tested social grant at the local government level.

<sup>51</sup> This manages quality social security services (social grants and pensions) to eligible and potential beneficiaries.

<sup>52</sup> Drawn from networks within NADCAO, the South African Council of Churches, and the National Welfare, Social Service and Development Forum, which are monitoring partners in this project.

<sup>53</sup> At the date of interview, the Johannesburg office had opened 2,479 new cases so far in 2010.

class action, although the Black Sash makes it clear that litigation is only used as an absolute last resort,<sup>54</sup> after all avenues of cooperative engagement are exhausted and no solutions are forthcoming. The organization has, however, had important successes gathering evidence from regional case data with which to mount a case, most frequently partnering with the LRC in line with the two organizations' long history of collaboration.

In 2000, the Regional Director of the Grahamstown Regional Office noticed that an overwhelming number of clients were having problems getting their social grants approved on time, and that when finally approved, they did not receive any back pay from the date of application. Case logs from the Black Sash database showed clients waiting from nine months to three years for approval of their grants. Given that Regulation 11 of the Social Assistance Act (1992) limited back payments to 90 days from date of approval, the long wait was having a serious impact on the lives of poor people while the Eastern Cape government saved money by allowing such long delays. The Grahamstown Regional Office monitored the issue for a year before taking it to the Black Sash National Advocacy manager for assistance. When other Black Sash regional offices showed similar patterns, the Black Sash referred the evidence to the LRC, which found grounds for a legal case against the National DSD and Eastern Cape DSD on the ground that Regulation 11, in relation to back pay, was unconstitutional.<sup>55</sup>

A settlement was eventually reached one day before the trial. The regulation was set aside, and an order issued giving people the right to back pay from the date of application. An amount of R 2.1 million (roughly US\$260,000) was made available for back pay to all who had been affected by the offending regulation. The Black Sash then went back to the grassroots level where the problem had been detected to make sure that the benefit of this order was felt by the thousands of people who had been affected. Paralegals communicated with the DSD, requested a list of all entitled applicants, and lobbied for the DSD to create pamphlets informing people of the court order and how to access their back pay. Individual CAOs then took on the task of finding people entitled to back pay and taking them to pay points with the necessary documents. More recently, in January 2011, the Black Sash won a case against the Eastern Cape DSD, compelling it to hear disability grant appeals and clear the backlog in which around 65,000 South Africans are currently trapped. In both cases, from start to finish, the Black Sash paralegals were the impetus and enforcement of the progressive realization of the right to social security, and helped secure administrative justice for poor and vulnerable people without the means to access other legal help to uphold their rights.

More generally, paralegals working within the Black Sash see themselves as legal facilitators, informing people of the right channels to take and unblocking any obstacles they encounter. Rights education is the Black Sash's priority, and information captured from case work helps to develop rights education programs through targeted media channels. In the Johannesburg regional office, the paralegals worked with three local community radio stations as well as one national radio station in 2010, talking on air about rights associated with their focus areas.<sup>56</sup> In all their offices, Black Sash paralegals do a substantial amount of community and peer training, from queue education for walk-in clients waiting in the office reception for consultation, to

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<sup>54</sup> Only 15 percent of individual cases are referred to litigation if the matter cannot be resolved by discussion and negotiation.

<sup>55</sup> *Njongi v Member of the Executive Council, Department of Welfare, Eastern Cape* (CCT 37/07) [2008] ZACC 4; 2008 (6) BCLR 571 (CC); 2008 (4) SA 237 (CC) ; 2011 (7) BCLR 651 (CC) (28 March 2008).

<sup>56</sup> In these radio talk show programs, hosted on Mteta, Alex, Gasi, and Mholbo FM community radio stations, Black Sash paralegals discuss issues relating to the labor system, particularly surrounding retrenchment and injuries in the workplace, as well as consumer issues and what to do if your social grant is delayed or denied.

running workshops on social security in conjunction with the National Welfare Forum.<sup>57</sup> They also train people to open new CAOs;<sup>58</sup> indeed, it was paralegals at the Black Sash who trained the LASA paralegals working in the new LASA call center. Finally, through their paralegal guides and manuals,<sup>59</sup> produced annually to update CAO paralegals on new legislation and policies, the Black Sash also extends its impact beyond the urban centers that are their primary focus, keeping in touch with the CAOs with which they were so strongly connected as an activist organization under apartheid.

South Africa's approximately 350 CAOs are small, nonprofit organizations staffed by paralegals and administrative coordinators who work to address the social ills caused by the continuing economic, social, and spatial legacy of apartheid.

CAOs provide free basic legal and human rights information to poor communities in peri-urban areas, rural villages, urban townships, and informal settlements, and form a central hub for local economic development and improvement in social welfare. A CAO paralegal's casework might involve negotiations with relevant governmental departments, ADR, or engaging with lawyers via a referral network. They might also engage in human rights- and livelihood-related education.<sup>60</sup> In addition, many CAOs take an active role in advocating for improvements in government policies and practices, and to this end form working partnerships with other civil society organizations to advocate and mobilize around relevant issues such as the back-pay matter raised by the Black Sash and the LRC discussed above. Thematically, CAOs work on a wide range of issues involving both the resolution of private disputes and matters concerning state accountability, but generally tend to tailor their interventions and focus to the specific environment and needs of the local communities they serve. Whether in a remedial or advocacy capacity, CAOs occupy central territory in terms of community development and legal empowerment of the poor by working to erase the detrimental legacy of apartheid and the current conditions of poverty experienced by many South Africans.

CAOs currently run without formal regulation, and there are no prescribed minimum standards of operation or regulatory authority to ensure compliance. The majority of South African CAOs (most with only one paralegal and sometimes one coordinator per office) are founded on the impetus of a community leader or other community-based organization, or on the suggestion of a neighboring CAO if it is clear that a nearby community has need for such an office. Once established and running with some form of community management in place, CAOs frequently align themselves under umbrella networks or within advice office clusters to maximize their efficacy and sustainability, particularly in the context of insecure funding. Outlined below are the structures through which affiliated CAOs operate at both the national and regional levels.

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<sup>57</sup> A coordinating body fostering dialogue and human rights advocacy with regard to social welfare, <http://www.forum.org.za/>.

<sup>58</sup> The paralegals in the Johannesburg regional office are currently assisting prospective paralegals to establish an advice office at Khanya community college.

<sup>59</sup> One such guide, "Social Assistance: A Reference Guide for Paralegals" (February 2010), is in use at the Lethabong Advice Office in the North West Province, a rural area without the physical presence of the Black Sash but which is still benefiting from its resources.

<sup>60</sup> Our research focused on case-tracking and, as such, we did not monitor any human rights awareness training. Critically, as elaborated on in sections 5, 6, and 7, while CAOs undertake human rights awareness/education training, the ones we observed do not seem to convert their paralegal case resolution experience into strategic lessons/training for the communities they serve.

## **National Alliance for the Development of Community Advice Officers (NADCAO)**

The National Alliance for the Development of Community Advice Officers (NADCAO) is an affiliation agency that seeks to facilitate the operations of the 230 CAOs that have joined the alliance.<sup>61</sup> It was set up in 2007 to fill the lacunae left by the closure of the National Community-Based Paralegals Association (NCBPA) four years earlier.<sup>62</sup> During this time, the sector lost much of its coordination and knowledge-sharing capacity, and without communication at a national level, the larger players in the sector (which later became NADCAO's founders) lost much of their footprint in terms of trend analysis across the country, while individual CAOs became increasingly isolated and unsupported.<sup>63</sup> NADCAO was founded by a steering committee of seven founder members, including influential bodies in the paralegal sector such as the Black Sash Trust (in whose Cape Town offices NADCAO is based), the CLRDC, the Association of University Legal Advice Institutions (AULAI) Trust, and SCAT. It is neither a membership<sup>64</sup> nor a funding organization (centralized funding is channeled to the sector through other umbrella organizations, namely SCAT, CLRDC, CCJ, and AULAI as described below),<sup>65</sup> but sees its role as providing strategic support and an advocacy platform to the community-based paralegal sector, helping it to consolidate a national footprint, position itself within national legal and institutional frameworks, and increase the capacity and sustainability of individual affiliated CAOs.

Funded by the Atlantic Philanthropies, the Charles Stewart Mott Foundation, and the Joseph Rowntree Charitable Trust, NADCAO plays a strong advocacy role and envisions an organized, institutionalized, and regulated sector, while recognizing the supporting role played by civil society organizations, with the goal that every community in South Africa will have walking-distance access to a functioning, well-resourced CAO. NADCAO's main functions are to increase communication and knowledge sharing among CAOs; to broker partnerships between CAOs and community stakeholders in government, civil society, and the private sector to garner financial support; to provide paralegal training; and more generally, to strengthen the efficacy and sustainability of CAOs.

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<sup>61</sup> It is notable that not all CAOs have affiliated with NADCAO, which is working to incorporate these organizations and extend its network, although a certain degree of formal establishment is required for affiliation. When we spoke to Greg Erasmus (former National Coordinator of NADCAO) in Johannesburg on January 25, 2011, he explained that NADCAO was in the process of establishing minimum operating criteria for a CAO to join the alliance. To maximize research efficiency, in this project we focused on affiliated CAOs as, without the assistance of a network structure, the unaffiliated CAOs are more difficult to identify and reach (indeed, most do not have Internet or good telecommunications access). Using NADCAO as the entry point also enabled access to hundreds of CAOs across the country, so we were able to include a range of CAOs in different localities.

<sup>62</sup> The NCBPA was established in 1996 as an umbrella organization for CAOs across South Africa, funded through a R 150 million grant for 10 years from the International Commission of Jurists. It aimed to uphold and develop CAOs and influence governmental bodies to improve working conditions for paralegals as well as implement national training schemes. Primarily the NCBPA worked as a membership organization providing funding to its members. The NCBPA's subsidiary project, the National Paralegal Institute (NPI), focused on developing a unified training system, and specifically it developed the Paralegal Diploma registered with SAQA. At its peak in 2001, the NCBPA represented 312 CAOs across all nine provinces. After management and finance problems, both organizations were no longer operational from 2003.

<sup>63</sup> Interview with Schalk Meyer, Director, AULAI Trust, Potchestroom, October 25, 2010. In Meyer's words, "it is a pity that the NCBPA collapsed, as it was on its way somewhere, doing good work. The advice offices too were working well at the time as they were being funded, and didn't have the frustration that is occurring now."

<sup>64</sup> This was the structure and modus of the NCBPA and NPI. However, issues of poor governance, fund-raising, and long-term sustainability experienced within those organizations led to NADCAO's decision to create an alliance of CAOs with ownership placed within the CAOs themselves.

<sup>65</sup> However, one of NADCAO's functions is to try to secure long-term funding for the sector as a whole.

Out of the 230 CAOs belonging to the alliance, former NADCAO National Coordinator Greg Erasmus estimates that there are currently 150 “good” offices, in terms of governance, accountability, and quality of service.<sup>66</sup> For Erasmus, the “good” CAOs are characterized by effective internal governance and accountability within the communities they serve. In the “not so good” CAOs, there are problems related to handling budgets,<sup>67</sup> practicing good governance,<sup>68</sup> and being unresponsive to local communities or simply not performing paralegal duties for community members. Such problems mainly stem from a lack of regulation and management and, in response, NADCAO is encouraging the forums to establish minimum standards for CAO governing bodies (management committees) and mandatory training in human resources and finance that is tailored to the CAO management committees.<sup>69</sup> At the time of this writing, however, this had not yet occurred.

NADCAO has been instrumental in advocating a role and institutional framework for paralegals in the Legal Practice Bill (discussed under section 5 below) and otherwise acting as a mouthpiece for the sector’s attempts to gain further formal recognition and public funding. Generally speaking, the paralegal sector appears to have welcomed NADCAO as a country-wide organization tool and national voice after a long period of fragmentation brought about when the NCBPA shut down. Under NADCAO, CAOs are also organized according to smaller specialist affiliation networks or clusters run by organizations on the NADCAO steering committee board.<sup>70</sup> Thus, at a regional level, CAOs are affiliated with SCAT (predominantly a centralized funding source) in the Northern, Western, and Eastern Cape, and the CLRDC and CCJ (providing training and funding) in KwaZulu-Natal (KZN). CAOs are also clustered by AULAI (providing mainly case referral support, as well as some training and a little funding) around university legal clinics. While NADCAO is formally independent of these support organizations, their directors are on the NADCAO steering committee board. The following sections examine the ethos and operations of these various organizations.

### **Social Change Assistance Trust (SCAT)**

With 27 years of involvement in the CAO sector, today, SCAT’s vision is to make CAOs into institutional centers of democracy within communities that empower the rural poor and strengthen civil society in remote areas of the Eastern, Western, and Northern Cape. It does so primarily through channeling start-up funding to CAOs<sup>71</sup> raised primarily from international donors.<sup>72</sup> SCAT currently funds 45 CAOs (all NADCAO affiliates),<sup>73</sup> managed by elected

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<sup>66</sup> Interview, Greg Erasmus, former National Coordinator of NADCAO, Johannesburg, January 25, 2011.

<sup>67</sup> In 2010, Erasmus purposefully tested whether the coordinators could effectively distribute R 20,000 from NADCAO for activities within their provinces. The majority handed the lump sum back to NADCAO, preferring instead to draw down the money on an *ad hoc* basis in response to demand.

<sup>68</sup> Typical governance-related problems include absence of management board, lack of transparency regarding finances, poor labor or working practices, and nonperformance of duties (interview, John Moerane, Provincial Coordinator of the Northwest Paralegal Advice Officers Cluster, Lethabong, February 14, 2011).

<sup>69</sup> For example, Bheki Shange, Coordinator of the Gauteng forum, is supervised by NADCAO to train CAO Management Committees across the forum on governance, finance, recruitment, and fundraising initiatives.

<sup>70</sup> While this might, at first glance, appear to be a strange structure, NADCAO provides a national presence and mouthpiece for the sector, while the other umbrella organizations described below provide specific assistance within regional contexts, including funding. It is possible that if NADCAO succeeds in achieving a more professional, better resourced CAO sector, NADCAO itself might no longer be needed.

<sup>71</sup> The SCAT model is to provide initial funding and to try to move CAOs as expeditiously as possible into a self-sufficiency mode in terms of which the CAO finds alternative sources of financial support, such as small contributions or levies from the community, as well as private sector involvement and local government service contracts on a project-by-project basis where possible.

<sup>72</sup> SCAT itself is funded by 22 donors, as listed at [http://www.scat.org.za/index.php?option=com\\_content&view=article&id=32&Itemid=29](http://www.scat.org.za/index.php?option=com_content&view=article&id=32&Itemid=29).

community members and mentored by a SCAT fieldworker who has the indigenous knowledge to pick up community dynamics and issues.

SCAT shares NADCAO's belief that community control is an essential component of civil society and accountable governance, a belief that directly shapes SCAT's funding policy requirement that the CAO is community based, rural, and collectively owned. More particularly, SCAT requires a CAO to have management committee annual general meetings (AGMs), a committee constitution, and regular committee meetings with the community that include a report from the CAO. Financially, the CAO needs to produce an audited financial statement within two years and then annually, as well as monthly or quarterly reports to SCAT. The CAO must be nonpartisan both politically and religiously, and membership and access must be open to all (a strategy aimed particularly at preventing xenophobia). Within two years of receiving SCAT funds, a CAO also needs to show a meaningful form of participation by women, either at the governance level within the CAO management committee or as paralegal or coordinator, or it must be able to show 50 percent female representation at all CAO workshops.<sup>74</sup> This is part of SCAT's belief that the key to social justice lies in actively involving women and other marginalized groups in all levels of decision making, and that gender empowerment in rural communities can be achieved by giving women a space in which they can claim expertise, power, and ownership.

As SCAT is primarily a start-up funding conduit, one of its main functions is to assist affiliated CAOs in becoming self-financing. This model obviously assumes that CAOs can attract funding elsewhere, though this is far from evident,<sup>75</sup> and there is some anxiety among CAOs related to future sustainability.<sup>76</sup> Nevertheless, SCAT remains committed to preparing CAOs for self-sufficiency and to this end, facilitates a platform for alternative funding models. The most influential, and arguably most successful part of SCAT's exit strategy is the Fund-Raising Incentive Scheme (FRIS). FRIS was launched by SCAT in 1996 as a grant-making mechanism that rewards CAOs for raising money in their communities, as through every R 1 raised through a local event, SCAT rewards the CAO with R 5. Around 80 percent of SCAT-affiliated CAOs participate in this scheme, through which they can claim up to R 25,000 per annum (US\$3,000), or up to R 100,000 (US\$12,000) if a CAO is not using its core grant of R 4,000 (just under US\$500) per month. The intention of the scheme is to foster a CAO's independence, reducing its reliance on grant funding and enabling it to access resources from local government and other community stakeholders.

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<sup>73</sup> Referred to by the organization as Local Development Agencies. At one time SCAT funded 88 CAOs, but a shortage in their own resources has meant a restriction in the number of CAOs they can support (interview with Joanne Harding, Executive Director, and Anthea Davids-Thomas, Training Coordinator, of SCAT, Cape Town, October 5, 2010).

<sup>74</sup> SCAT funding will cease for CAOs where men refuse to involve women in community affairs, although SCAT will intervene with a series of gender sensitivity strategies before this occurs.

<sup>75</sup> There is currently a similar trend with NGO funders in South Africa, which are attempting to "wean" many of their grantees off funding, even in the face of no other sources of funding becoming available. This is partially a consequence of the global economic recession, which has adversely affected many of the western donors. But it is also a result of a generalized sentiment that funding should be decreased to South Africa because it is a middle-income country and has already benefited from large amounts of donor funding.

<sup>76</sup> According to Joanne Harding, when SCAT starts to decrease support (as part of its exit strategy), CAOs sometimes feel they are being punished for bad behavior (interview, Joanne Harding, Executive Director of SCAT, Cape Town, October 5, 2010).

According to the observations of SCAT's fieldworkers,<sup>77</sup> FRIS raises the status of the CAO within the community by promoting community networking and participation. The average FRIS event involves between 160 and 200 community participants and raises about R 2,000 (US\$250), although in 2009, the Prince Albert CAO fish barbeque raised R 50,000 (US\$6,150), and the Thusa CAO taxi wash raised R 25,000 (US\$3,000). The money is much needed and used to keep the CAO running on a daily basis, providing transport to service surrounding villages, starting community development projects, purchasing stationary stock, paying electricity bills, or increasing staff salaries. SCAT's incentive scheme to encourage a CAO to raise funds through its own efforts promotes a sense of responsibility, develops the CAO's financial skills, and promotes planning, budgeting, and transparency.

Since 2001, SCAT has also run HIV/AIDS awareness programs on an incentive basis, providing funding of up to R 50,000 for a good HIV/AIDS program by a CAO. Thus far SCAT has funded 38 CAOs through this system, although specific funding for HIV/AIDS programs is currently being substituted in favor of funding related to strengthening health systems. CAOs are also encouraged to apply to tap SCAT's Development Fund for training staff and volunteers,<sup>78</sup> again, with an emphasis on self-starting and self-policing, CAOs have to meet certain criteria for a budgetary allocation to be claimed as needed.

Notwithstanding concerns over longer-term financial sustainability, SCAT's support to CAOs appears to work well at the developmental stage, putting in systems to build strong institutions that are attractive to donors. SCAT fieldworkers, who usually have a background in social sciences, complete a Developmental Practice course on how to work progressively with communities, and receive training on specific issues such as HIV/AIDS awareness and testing and local economic development initiatives. The fieldworkers assess how the management committees and coordinators of CAOs are building the capacity of the institution; they also provide on-site support to CAOs and play a brokerage role with the municipality, frequently auditing the organizations' management and technical skills and giving advice on project management and budgeting.

### **Community Law and Rural Development Centre (CLRDC) and Centre for Criminal Justice (CCJ)**

The CLRDC and CCJ are based in KZN and work closely together on research, training, monitoring, and funding proposals to advocate for the recognition and regulation of paralegals, particularly those who service rural areas. In total, the two organizations cover 45 advice offices (CCJ has 15 and CLRDC has 30 affiliated CAOs) with 54 paralegals, accounting for more than 80 percent of the CAOs in KZN. The CLRDC and CCJ mainly provide funding, training, and capacity-building support to their affiliated CAOs, which also have access to two in-house attorneys based at CCJ for back-up legal advice. Although the substance of the work of their CAO branches is similar, as parent organizations, CLRDC focuses more on management support and performance monitoring, while the CCJ is more responsible for training, capacity building, documentation, and research.<sup>79</sup> They also operate in different contexts. For the past 20

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<sup>77</sup> Interview with Colleen Alexander, Regional Coordinator of fieldworkers in the Western and Northern Capes, SCAT, Ceres, October 6, 2011.

<sup>78</sup> SCAT uses the South African Law School for paralegal qualifications, most usually the one-year correspondence course that can be completed on site. Details available at <http://www.lawschool.co.za/>.

<sup>79</sup> The CCJ operates from the University of Kwa-Zulu Natal (UKZN) in Pietermaritzburg and is affiliated with the Law Department. The CCJ runs two programs: its outreach program, which involves 20 paralegals in 14 CAOs, and a research program, which maintains a library and database of 65,000 cases for the benefit of UKZN law students.

years, the CLRDC has been operating in communities governed by customary law and tribal authorities, and more than half of CLRDC's 30 branch CAOs are located within traditional court office buildings rather than municipal structures. Meanwhile, the CCJ supports 15 CAOs<sup>80</sup> operating in more "modern" settings, such as police stations or magistrates' courts.

Together, the CCJ and CLRDC are working on a five-year strategic plan for each of their branch CAOs to be independent NADCAO affiliates, without requiring funding by the CLRDC or CCJ, and instead creating localized programs and raising their own resources.<sup>81</sup> Similar to SCAT's exit strategy, CLRDC and CCJ are currently identifying and building the prerequisite capacities of CAO management committees and paralegal staff to take full responsibility for running their organizations.<sup>82</sup> Both CLRDC and CCJ are funded by the Atlantic Philanthropies, with CLRDC also receiving funding from the Joseph Rowntree Charitable Trust and CCJ from the Ford Foundation. Although the organizations would like to pay paralegals a salary of at least R 5,000 per month, in 2010 salaries had to be cut to around R 2,500 per person per month due to a shortage of funds.

CLRDC and CCJ paralegals operate mainly in rural and peri-urban areas in KZN<sup>83</sup> and handle client matters similar to the SCAT-affiliated CAOs. The paralegals' jurisdiction is wide given the remote locations in which they work; one CCJ CAO for instance services a population of 1.2 million. On average, CCJ CAOs handle 80 cases per month; however, it is notable that 50 percent of cases handled by CCJ CAOs are related to domestic and sexual violence.<sup>84</sup> CCJ-affiliated CAOs receive around 9,000 such complaints per year, a high figure that Winnie Kubayi, Director of the CCJ since 1997, believes is inextricably linked to living in rural areas, where rights education is weakest and the patriarchal Zulu community makes the solutions typical in cities more difficult to attain.<sup>85</sup> It is also worth noting that the CCJ only employs women as paralegals as part of its policy of gender empowerment in rural areas. CCJ identifies cases by working alongside the police and making home visits within communities, which helps to bring to light cases of a sensitive nature and encourage victims to report crimes. Physical proximity to the police station is the best place for the CAO to ensure that clients' issues are handled appropriately, affording them safety, confidentiality, and access to medical treatment. It also places the CAO strategically in the best position to play a watchdog role over the police, aiming to decrease abuse and increase the accountability of the criminal justice system.

CLRDC and CCJ paralegals are also active community educators, mandated by their parent organizations to run two workshops and make four school visits per month. They make weekly

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<sup>80</sup> Referred to by the organization as "support centers."

<sup>81</sup> The attempt to build the capacity of CAOs is out of the belief that doing so will ensure their long-term sustainability. This is certainly closely related to the funding crisis within CCJ and CLRDC themselves. At one stage, CLRDC had 67 offices, with a footprint in every corner of the province and frequent meetings with Amakhosi; by 2005, this was reduced by nearly half, due to cash flow issues and the new demarcation of the province leading to a necessary reshuffle of offices around various districts. CLRDC itself cut its head office staff from 20 to 2. Once CLRDC and CCJ have built up the capacity of their branch CAOs in order to make them financially independent, CLRDC and CCJ intend for the CAOs to maintain a strong affiliation with them in terms of mentorship, collaborations on areas of mutual interest, and paralegal training programs.

<sup>82</sup> A joint infrastructural assessment and skills audit of the 45 CAOs affiliated to CLRDC and CCJ, conducted between February and April 2010, confirmed that 95 percent of paralegals have the National Diploma in Paralegal Studies, but only 50 percent of CAOs have the basic infrastructure required for autonomy.

<sup>83</sup> This is due to the presence of the Black Sash, LASA, and the UKZN law clinics in the KZN urban centers of Durban and Pietermaritzburg.

<sup>84</sup> See <http://ccj.ukzn.ac.za/Cases/CasesOverview.aspx>. CAOs do not actually resolve criminal matters, but rather assist claimants to go to the police station to lay charges and also provide support to victims of violence.

<sup>85</sup> Interview with Winnie Kubayi, Director, CCJ, Pietermaritzburg, October 13, 2010.

presentations at medical clinics, church groups, or community development meetings, and hold focus group workshops every quarter, where a group of former clients will gather to discuss common concerns.

### **The Access to Justice Cluster (AJC) Program of the Association of University Legal Aid Institutions (AULAI) Trust**

The remaining organizational structure for CAOs is the ACJ program run by the AULAI Trust. The AULAI Trust, which developed out of the AULAI that was established in 1982 as a kind of trade union for all university law clinics, was founded in 1998 with a once-off grant from the Ford Foundation. The Trust acts as a funding agency to South Africa's 18 university law clinics and their associated projects, one of which is the AJC program, which operates through eight AJC clusters attached to eight of the university law clinics.<sup>86</sup>

These eight AJC clusters consist of the cooperative body of university law clinics, LASA justice centers,<sup>87</sup> NGOs, CAOs, community-based and faith-based organizational networks, and private practitioners working together to provide access to justice and services to poor and marginalized people in rural and remote areas, informal settlements, and squatter camps.<sup>88</sup> South Africa's eight clusters provide training and back-up legal services to approximately 100 CAOs across the country, enabling qualified lawyers to support paralegals without prescribing or restricting their broad scope of work.<sup>89</sup> For example, within the Northwest AJC (NWAJC), an attorney from the university law clinic at Potchestroom visits eight CAOs in the province on a monthly basis. This attorney visits each CAO in the cluster to pick up cases that are beyond the capacity of the paralegal to assist. At the time of this research, the NWAJC attorney had 500 live cluster case files on her desk, which did not account for the extent of legal advice provided *ad hoc* on the day of her monthly visit in consultation with walk-in clients. The CAOs within the NWAJC stockpile cases in advance of the attorney visit, or call the university law clinic if advice is required more urgently.

A key benefit for CAOs within a cluster network is the level of training provided by the university law clinic. Again the training focus is institution building as well as legal literacy. The NWAJC on-site training manual for office administration hosted in 2010 includes information on following banking procedures, maintaining efficient filing systems, making funding proposals, and writing notices and agendas of meetings, as well as information on how to take statements, draft a letter of demand, make checklists of documents required for civil claims, and complete client interview intake forms. Formal legal training is also provided with differing areas of focus. For instance, the training given to paralegals in the NWAJC in November 2010 focused on domestic violence and the law with regard to seeking a protection order, as well as consumer law and issues around breach of contract and malfunctioning goods. Less frequently, AJCs provide funding to CAOs within their clusters if they can prove that the office has a functioning management committee, is registered as a nonprofit organization, has a constitution, takes minutes from general meetings, possesses an operational bank account, and has been running for at least two years. For the past three years, the AULAI Trust has provided

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<sup>86</sup> Operating from the Universities of the Western Cape, Free State, Northwest (Potchestroom and Mafeking), Limpopo, Rhodes, and Stellenbosch.

<sup>87</sup> As mentioned above, the access to justice clusters have a cooperation agreement with LASA, with which they have been working since 1993.

<sup>88</sup> Interview with Schalk Meyer, Director AULAI Trust, Potchestroom, October 25, 2010.

<sup>89</sup> In a similar way to the CAOs affiliated with SCAT, most CAOs within the cluster networks are part of NADCAO's provincial structures.

some funding on this basis to qualifying CAOs, with each CAO normally receiving between R 2,000–3,000 (US\$245–370) per month.

Evaluating the impact of human rights work is notoriously difficult. Moreover, as hard as it is for NGOs to demonstrate impact, it is usually much harder for CAOs, which inevitably have fewer and less-skilled staff members to undertake the kinds of record keeping, case management, and follow-through necessary for effective impact analysis. Indeed, many CAOs find themselves in a vicious cycle of not having the skills and personnel to properly monitor and report on their work, which inhibits attempts to raise the requisite funding and thereby limits the scope and value of their work with communities.

At the same time, human rights practitioners, including paralegals, realistically understand donors' needs to show progress and value for funding. Indeed, funders' requirements are not only about form, and there is obviously much benefit from being able to evaluate the value of interventions in some form or other. For organizations such as the Black Sash, which keeps a case log database, it is more possible to measure the impact of paralegal case resolutions and to see, for instance, that Black Sash clients access more than R 1 million in social grants and private pensions each month due to their interventions. Likewise, where they exist, past funding proposals yield hard data from which a quantitative impact can be assessed.

For example, the CLRDC 2009 report to the Mott Foundation collated CAO available statistics and showed that approximately R 3 million (US\$370,000) was recovered for clients and over 300 community education workshops attended by over 15,000 participants took place in 2008–09. However, although such figures, when available, do provide an insight into the impact of community-based paralegal work, they do not properly give a sense of how paralegals address specific problems within their communities, how appropriate their techniques are to local dynamics and sensitivities, or what obstacles hinder their work. We have therefore attempted, on a very modest scale, to provide some qualitative data on the kinds of cases being taken up by paralegals and the ways these impact the clients and communities.

Drawing from the broader case studies of eight CAOs, our evaluation is based primarily on 12 case-tracking interviews (using a semi-structured questionnaire) with current and former clients at six CAOs, four in KZN<sup>90</sup> and two in the North West Province.<sup>91</sup> Access to the CAOs was provided by CLRDC and CCJ in KZN, and the NWAJC in the North West Province.<sup>92</sup> The emerging themes were surprisingly consistent, suggesting that there are systemic challenges and

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<sup>90</sup> Elotheni, Mpopomeni, Impendle, and Kwa-Qiko.

<sup>91</sup> Phokeng and Lethabong.

<sup>92</sup> We concede that some bias might have crept in as a result of using the umbrella affiliates as entry points to the clients and cases, but this was the most effective way to identify sources given our time constraint. However, we did attempt to mitigate any bias by speaking to clients directly and wherever possible without a translator or the paralegal. Moreover, by asking to have access to “losing” cases and through meeting clients with live cases at the offices, we were able to gain a relatively realistic snapshot of CAO work. We should point out, however, that we found it almost impossible to assess the counter-factual. For example, when we asked clients “what would you have done if the paralegal was not here to help?” the overwhelming responses were “I don’t know” or “I would have given up.” One client answered that she would have “had a heart attack from stress.” We have therefore focused rather on why each case went well or did not go well.

opportunities within the sector. Below, we present an empirically rich impressionistic picture of the impact of CAO work on clients and communities drawn directly from our case-tracking exercise. We then analyze the seemingly generalized features as either facilitating or hindering institutional and organizational determinants in sections 5 and 6. Given the nuanced, contextual, and very detailed nature of this work, it is worthwhile to first present the case studies in their entirety before integrating the salient fault lines into the analysis.

At a relatively late stage in our research, we added a case-based evaluation component in an attempt to better analyze the role and work of CAOs. However, due to time and budgetary constraints, we were unable to conduct an extremely intensive, long-term case-tracking exercise. Instead, we opted to parachute into the exercise through the entry point of the umbrella organizations outlined above, specifically the CLRDC and CCJ in KZN and the NWAJC in the North West Province.

In KZN, we asked CCJ/CLRDC CAO paralegals to identify relevant cases (we asked to have access to “successful/resolved” as well as “unsuccessful/unresolved” cases on a range of issues) and also asked willing clients to stop at the CAO during our visit. We observed walk-in clients as well. In the North West Province, we accompanied NWAJC attorneys on their monthly visits to the CAOs, observed paralegals dealing with cases, and interviewed the clients present at the CAO if they were willing to discuss their issue. Although we asked to have access to a range of cases, as it turned out, we accessed mainly cases dealing with social and financial security, despite being advised that gender-related matters usually make up the majority of complaints.<sup>93</sup>

### **Case 1: Pension claim (state)**

#### **Elotheni CAO (CLRDC branch), Kwa-Sani, KZN, February 8, 2011**

In the first case, which concerned an elderly woman whose pension was suddenly and inexplicably stopped, the paralegal became involved only when the client’s relationship with the DSD had turned sour: “It was very painful when my pension stopped, as for five months I had nothing to support myself or my grandchildren.” The paralegal was able to use her contacts in the DSD to investigate what had happened. She also contacted a fellow CLRDC paralegal to inquire how to elevate the matter to the MEC for Social Development. After writing to the MEC, the client’s pension was restarted and she was awarded back pay of over R 9,000 (US\$1,100). Here it was apparent that the close working relationship between the state and the CAO was an advantage, as it made possible a swift and effective resolution of the matter. As the client explained regarding the paralegal:

Thandi<sup>94</sup> is experienced in helping people with these things and she knows what to do.  
The DSD people were hostile to me but they work together with her as she knows what

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<sup>93</sup> Although CAO and umbrella organization interviewees in the first round of research all pointed to the high number of domestic violence cases they assist with, to our surprise, none of the cases we tracked during the second phase of research involved domestic violence. We do not know whether this was because our entry-point interlocutors filtered out such cases due to sensitivities or whether it was simply a coincidence that on the days we tracked the cases in the six CAOs, no domestic violence cases presented themselves. It should be noted that having asked to observe and track “cases,” we did not examine any rights awareness workshops, but these do occur on a range of topics including health care, gender, education, and work-related issues. For example, as previously mentioned, in CLRDC’s annual report to the Mott Foundation in 2009, it is stated that CLRDC, in partnership with CCJ, ran 300 workshops involving 1,500 participants.

<sup>94</sup> Name has been changed to protect anonymity.

she is doing. It helps that she is a local person so she knows us but also knows the protocol of working with the municipality. She knows what doors to knock on.

It was also clear that being able to call on the knowledge and experience of other community-based paralegals was very useful, as the paralegal relied on the network of advice offices within the CLRDC. However, when we asked, the client was not clear about the details of how her case was resolved and it was evident that the paralegal had not explained the process or the content of the phone calls and letters. Should a similar problem occur, it is likely that the client will not be able to resolve it independently, although it was clearly a simple administrative error. Indeed, the client told us that many people in the community face the same problem, yet the CAO had not attempted to empower the community collectively to tackle the issue. When we asked the paralegal whether the problem was too difficult to explain to people, she told us that such cases are common and very easy for her to resolve. To us it seemed that an educational opportunity that might free up paralegals for other more complex cases was being missed. It is possible that the paralegal was guarding her territory for fear of being seen as superfluous, or she simply was not thinking more strategically.

**Case 2: Unemployment benefit claim (state)  
Elotheni CAO (CLRDC branch), Kwa-Sani, KZN, February 8, 2011**

In this case, the CAO was attempting to assist a client in accessing unemployment benefits from his former employer in Johannesburg. The paralegal had previously helped the client complete the official forms to apply for the benefit, but this had not been successful. The case had remained unresolved for some time and evidently the paralegal did not feel confident about how to proceed unaided. At the time of our observation, the paralegal was telephoning the CRLDC for advice on taking the matter to the Financial Services Board.

Although pointing to the importance of the relationship with umbrella clusters such as CRLDC, this “unresolved” case reflects a level of disempowerment or incapacity among CAO staff. While this particular paralegal knew how to complete forms, he was not able to take the matter further without assistance, involving a long and expensive telephone call (which the paralegal had to pay using his own cell phone), as well as delays (given that CLRDC’s staff has fallen from 20 to two). With enhanced legal advice and better knowledge sharing between paralegals, the paralegal at this CAO probably could have resolved the matter more efficiently. This case also highlighted the problem of insufficient funding for CAOs, as it was evident that paralegals often have to put their own meager earnings into the project to pay for such basics as telephone calls.

**Case 3: Child custody dispute (family)  
Impendle CAO (CCJ branch), Ingwe, KZN, February 8, 2011**

Here, the client was the mother of four young children staying with their paternal grandparents while she worked in Pietermaritzburg. Traditional custom dictates that children born to unmarried parents belong to the father’s family and that a child can be brought into the house in exchange for cattle. After receiving some financial support from the father’s family, the client was refused access to her children for two years, during which time she realized they were being forced to work for the family: “they were being treated like slaves, going out into the forests far away to look for [lost] cattle, and doing all the cooking and cleaning in the house.” Relationships within the family had broken down by the time the client sought the help of the advice office. She turned to the paralegal for help, as she knew her already as a person in the community who could assist in such matters.

To assist her client to regain custody, the paralegal drew on her connections with the police and the traditional court. First, the paralegal discussed with the tribal court elder how traditional custom had been distorted in the case and that paying money within families was leading to a form of trafficking. Having gained the support of the traditional court authority, she went to the house with the client and a police escort, and was able to retrieve the children. She then began the process of assisting her client in applying for child grants.

This case demonstrates the value of the paralegal's position of straddling plural legal systems. It also shows the importance of being embedded within the community and being able to forge ongoing relationships with key stakeholders. In this case, the client approached the paralegal as an external but trusted source of help, and she told us that she particularly appreciated the patience and sensitivity with which the paralegal handled the matter.

**Case 4: Familial dispute over provident fund benefit (family)  
Impendle CAO (CCJ branch), Ingwe, KZN, February 8, 2011**

This case involved a familial dispute around claims to access the provident fund of the client's estranged late husband. The matter was referred from the estates office next door to the CAO within the Impendle Magistrate's Court. Relationships within the family had broken down when the client's in-laws did not recognize her legitimate claim to the money. The client had difficulty completing the necessary application forms and applying for a letter of authority in order to access the provident fund. As she explained:

I could not sort out the complexities of this problem. I'm not clued up about these things and I wouldn't have known where to go to get help. I'm an elderly person and I was going to give up as my husband had never told his employers he had a wife and so I faced a lot of difficulties

The paralegal was able to resolve the issue by accompanying the client to the Impendle Magistrate's Court, and explaining to the rest of the family the legal implications, including that the client was a beneficiary. The client eventually received a benefit of R 207,000 (US\$25,500). In the client's words: "Lerato<sup>95</sup> (the paralegal) took the stress from me and handled the problem much quicker than I could have. At the time I was very poor, but Lerato swallowed all the costs, using her car to get to court and make family visits."

This case exemplifies how paralegal intervention is often a hand-holding exercise for clients made vulnerable due to their lack of legal literacy and confidence in approaching state or judicial institutions. It also shows the value of being linked to umbrella clusters such as the CCJ.

**Case 5: Access to health care and social security (state)  
Mpopomene CAO, KZN, February 9, 2011**

In this case, the intervention by the CAO was wide-ranging. The paralegal became involved after hearing reports that the client's 11-year-old daughter was frequently absent from school. On visiting the family, the paralegal found that the girl was caring for her sick mother and three-year-old brother, rather than going to school. The paralegal deduced that the client was suffering with HIV/AIDS and was no longer able to work. Moreover, the family did not have enough food, as the client's disability grant had been terminated. The client told us that the paralegal's

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<sup>95</sup> Name has been changed to protect anonymity.

intervention saved her life. The paralegal organized food parcels to be delivered to the family, and applied for the client's disability grant to be restarted. She referred the matter to an NGO providing home-based care so that the elder child could return to school, and she also enrolled the younger child in a nursery school. The client has since regained her strength and is healthy enough to return to work.

This case points to the special role that paralegals play by virtue of being embedded in a community and attuned to people's problems, as well as operating on the nexus between legal and social work, so that they are able to simultaneously meet needs for legal assistance and social care.

**Case 6: Social security grant for migrants (state)  
Mpopomene CAO, KZN, February 9, 2011**

This client was a permanent resident, originally from Lesotho. He had misplaced his South African identity document, a prerequisite for a social grant application. His family was struggling to survive, and the client wanted to apply for child support grants for his three children. He had repeatedly been frustrated in his attempts to sort out the problem at the municipal Department of Home Affairs, and was advised by the local police station to go to the CAO.

The paralegal contacted the Department to report the missing identity document. She then had the creative idea of asking the client's neighbor to stand in as a named adult recipient to receive the grant on the children's behalf. Having organized this, she took the client to SASSA and made a successful application. The whole process took about six weeks and has alleviated some of the family's financial struggles. In the client's words:

I was about to give up as I had tried everything. If a minister had been here I would have thrown myself at his feet. I did not know what else I could do and we were desperate as I have found it hard to find work since my wife died three years ago. Naledi<sup>96</sup> (the paralegal) thinks of ways around problems that are less obvious, and she knows the people to talk to. Getting the grant has meant I can stay here with my children and look for work here rather than leave them to go to the city.

This case highlights how a good working relationship with state departments, along with the use of ingenious tactics, enables paralegals to find solutions for clients who believe they have exhausted all options

**Case 7: Access to housing (state)  
Mpopomene CAO, KZN, February 9, 2011**

The client in this matter was disputing the ownership of an RDP house that had been occupied by her late cousin. At the time of our research, the matter was unresolved, as the paralegal's attempts to mediate between different family members had broken down due to the hostility of the parties. The paralegal subsequently tried to refer the matter to LASA, which did not have the capacity to assist, and then managed to refer the matter to the in-house attorney at the CCJ (we

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<sup>96</sup> Name has been changed to protect anonymity.

<sup>97</sup> Reconstruction and Development Programme (RDP) houses are small houses transferred to poor households by the state. They are usually on the urban periphery and often in areas that have limited transport connections and job opportunities. They have thus been criticized by many human rights activists as not constituting the kind of convenient and useful social housing found in the central business district areas in some cities.

were unable to ascertain whether any progress had been made). The client appeared to be remarkably philosophical about the case, accepting the limits of the paralegal's intervention and telling us that a paralegal "can only go so far."

Nevertheless, it seemed to us that a hindering factor in this case was the unavailability of LASA assistance and public interest lawyers, especially in rural areas, to assist in a case that, ultimately, had to be resolved in court.

**Case 8: Disability grant (state)  
Qiko CAO, (CLRDC affiliate), KZN, February 10, 2011**

In this case, the paralegal assisted a client whose disability grant was terminated without explanation or medical examination. The client had claimed the disability grant since suffering a stroke in 2002. Apparently, the grant had been erroneously cut as part of the DSD's campaign to stop people from fraudulently claiming disability benefits. The client, through family members, had been repeatedly told by the DSD that she had been declared healthy, despite the fact that no medical examination had taken place. The client took the matter to the CAO, and the paralegal wrote to the DSD and secured a medical assessment on behalf of the client to prove she was entitled to the benefit. The process took three years, but the client was able to restart her disability grant and received over R 40,000 (US\$5,000) in back pay.

This case illustrated again the critical role for paralegals in sorting out systemic problems with DSD/SASSA and the administration of social welfare grants. It also highlighted the need for greater knowledge sharing and a strategic approach to such generalized problems. Clearly, the same issues within the state bodies occur repeatedly—of grants being refused, cut, or administered with long delays. The know-how regarding resolution of such issues exists within the paralegal network but tapping into this would require a better case management system, better communication between CAOs, and the willingness or capacity to think more strategically about systemic problems and their resolution.

**Case 9: Contractual dispute (private)  
Phokeng CAO, (within AULAI's NWAJC), North West Province, February 14, 2011**

This case involved a breach of contract on the part of a gravestone manufacturer and shop outlet. The client paid R 10,400 (nearly US\$1,300) for a gravestone that was never delivered, and on visiting the premises, she found the business had closed down. The police could not assist her, and the LASA satellite office in Rustenburg was not taking on civil cases at the time. The client therefore approached the CAO, which consulted with her before referring the matter to the ACJ attorneys. In this case, the client was unhappy, as following the referral the attorneys had not been in touch with her or the paralegal for several months and she had no idea what progress, if any, had been made on her case.

This case highlights how, notwithstanding the importance of links with umbrella clusters such as ACJ and their lawyers, a key quality of the relationship with paralegals and clients can become lost when the matter is referred to lawyers. It is likely that with more resources and better case management, the paralegal might be able to dedicate more time and energy into keeping up communications between the lawyer and the client. However, as things stood in this case, once the matter was referred, it was effectively removed from the paralegal's desk, to the frustration of the client.

### **Case 10: Debt claim (private)**

**Lethabong CAO (within AULAI's NWAJC), North West Province, February 15, 2011**

This dispute involved a breach of agreement by two members of a burial society who failed to make the agreed contributions, resulting in a financial loss for all other members. The clients—aggrieved members of the burial society—lived in a remote area, and had heard about the CAO office from workers on neighboring farms. Once the matter was brought to the CAO, the paralegal mediated between the parties in a three-hour session, which culminated in the debtors signing an acknowledgement of debt to be paid off in monthly installments. In addition, the paralegal advised the burial society on the benefits of making formal, more easily enforceable agreements, and helped the society draw up a constitution.

Here, the paralegal was able to take the case further than the resolution of the matter at hand, by assisting the farm workers to draw up formal documentation for the burial society. As explained by the paralegal:

Local people often do not enter into formal agreements and relations go sour. They do not have the financial or administration knowledge to be able to protect their investment in community enterprises. We try to educate people about how to enter into formal agreements, and encourage them to visit the CAO for advice.

The case also showcased the value of mediation as an ADR technique that was able to resolve the issue without the expense of lawyers, and how it was particularly appropriate for the people involved in the context of rural society and culture. In the paralegal's words:

Mediation brings peace. These people live in the same village and they need each other. It does not help community participation in development when people who live close together are warring with each other.

### **Case 11: Inheritance (family)**

**Lethabong CAO (within AULAI's NWAJC), North West Province, February 15, 2011**

The client in this matter was a legitimate beneficiary of her late husband's estate but was being prevented by her husband's family from accessing the resources to which she and the children from her marriage were entitled. Despite having a letter of authority from the magistrate's court naming her as a beneficiary of his estate, her husband's family refused to acknowledge that the couple were married.

The paralegal did the groundwork on this case before referring it to attorneys at the NWAJC, which was able to deal with the issue and enforce her claim to the estate. Neither paralegal nor client was involved in this process and the attorneys did not, in that sense, up-skill the paralegal, pointing again to the complexities of referral to lawyers. While this is as much a criticism of lawyers as of paralegals, it is likely that better resourcing and better case management would improve paralegals' proactive ability to learn from lawyers.

## **Case 12: Debt claim (private)**

**Lethabong CAO (within AULAI's NWAJC), North West Province, February 15, 2011**

The client in this case was a traditional healer who was owed R 600 (US\$75) for a service he performed for another community member who refused to pay. The client approached the advice office because there is no chief's office in the area and the small claims court is far away and expensive to get to. The paralegal had been trained in mediation techniques by the NWAJC, and after sending a letter of demand, approached both parties to participate in a mediation session. The client appreciated the authority and objectivity that came with the intervention of the advice office. He told us that he also appreciated that the paralegal did not enforce a solution on the parties, and how this led them to shake hands. This was important to the client, as the two men are neighbors and it is essential to remain on good terms.

At the end of the mediation, the parties made an oral agreement that the debt would be repaid within one month in two installments, receipted for at the CAO. The client told us that using the services of the advice office was an "eye opener" for him, as he had no means of otherwise recovering the debt. The benefit of having a trained mediator in the community was very clear in this case, where a mutually acceptable and speedy resolution was achieved without either the cost or damage to community relations that litigation would have caused.

From the case studies it appears that there are several facilitating as well as hindering determinants that can be broadly defined as institutional, that is determinants that relate to formal institutions of the state. Relationships with the state and with traditional authorities have been analyzed as facilitating determinants, and as hindering determinants, an unclear regulatory environment, insecure and insufficient funding (which was included here for reasons outlined below, but which obviously also impacts organizational capacity, etc.), and a reliance on remote lawyers and LASA.

### **Relationships with the state**

State institutions are some of the most important stakeholders within the community-based paralegal sector. The ultimate resolution of the many problems facing their clients often depends upon these institutions, and nurturing state relations is crucial if CAOs are to become stronger organizations and embed themselves into the fabric of society. The generalist nature of the work of community-based paralegals means that they foster relationships with a wide range of state bodies and government departments at the municipal, provincial, and national levels. Based on their common individual client matters, South African paralegals deal most frequently with the DSD for social security concerns, the Department of Home Affairs for identity documentation issues, the Department of Health for issues relating to the rights of people with HIV/AIDS, the Department of Labour for employment concerns, and the police for family and gender-based matters.

For the most part, it seems there is substantial (nonmaterial) support for CAOs from the state, based on the state's appreciation of the role paralegals play in smoothing the process of service

delivery.<sup>98</sup> This good working relationship, as explained by a paralegal at the Mpopomene CAO, is because “[the municipality] could not serve the community properly but now, knowing that the advice office is there, they are working better on the people’s behalf and making more effort, for instance with the provision of free funeral services and food parcels.”<sup>99</sup> The state has acknowledged its support for community-based paralegals in very practical, valuable ways, for example, in the way that CCJ branch CAOs have been able to physically mainstream their advice offices within state criminal justice institutions. This affiliation with the police has made their watchdog role easier, given the paralegals’ greater influence in community affairs, and allowed them to share resources in terms of rental and utility payments and transport costs. Similarly, the municipality shows its approval of the work of the Zola CAO by paying the cost of rent, electricity, and water for its base at the Jabulani Youth Club, and for the Mpolo CAO by providing an office free of charge within the town hall.

This somewhat strange symbiotic relationship, which helps CAOs resolve community problems such as the mistaken termination of social grants and so forth, in essence means that CAOs often do “the government’s job.” Interestingly, there does not seem to be much animosity on the part of state officials toward paralegals for effectively showing them up, and this is possibly related to the nonadversarial way CAO paralegals work, as elaborated on in section 6. More research is required to examine the dynamic between state officials and CAOs more fully. Most importantly, the clients and communities clearly benefit significantly from these solid relationships with state institutions, as reflected in cases 1, 3, 6, and 8 above, in which problems relating to the state’s nonperformance were resolved by CAOs through their good relationships with state bodies (specifically, DSD/SASSA and the police in these cases).

### **Relationships with traditional authorities**<sup>100</sup>

Traditional authorities operate within a dualist system of government in seven of South Africa’s nine provinces, most notably in the rural areas of KZN and the Northwest and Eastern Cape, and the Constitution recognizes customary law that is upheld and acknowledged within common law courts. Paralegals in rural areas under chieftain leadership play an important role in reconciling the interpretation of common law with respect for cultural values and practices. Being part of the community, these paralegals are well placed to straddle South Africa’s dualist legal system, as they have the training to be able to translate the Bill of Rights and so can supplement the role and function of the chiefs’ offices and tribal courts. For example, during our research, we were told about a chief asking the paralegal to conduct the proceedings in his court so as to ensure the parties in dispute were aware of their legal rights and options.<sup>101</sup> Indeed, according to our observations, community-based paralegals in these areas have good working relationships with the chiefs’ offices, as highlighted in case 3 above. There are more formal manifestations of the close working relationship between CAOs and traditional authorities. For example, in KZN, 15 CLRDC CAOs are located in traditional court office

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<sup>98</sup> Using the CCJ as an example of the mutual reliance of the two parties, in 2010, 38 percent of referrals to CCJ (totaling 2,157 cases) were made by government service departments, the most common being the police and social welfare department, as well as referrals from hospitals and health clinics. Pointing to the reciprocal relationship between community-based paralegals and the state, in the same year, CCJ’s support centers referred 27 percent of cases (1,548 cases in total) to other service providers, with the police, hospitals, and social welfare agencies the most frequent partners. Many of these referrals were followed by negotiations with service providers on behalf of a client, and by a monitoring of the service given.

<sup>99</sup> Interview, Lucky Mkhize, Mpopomene, KwaZulu/Natal, February 9, 2011.

<sup>100</sup> This determinant obviously overlaps and intersects with what we viewed as the social determinant of CAOs’ embeddedness in communities.

<sup>101</sup> Interview, Winnie Kubayi, Director, CCJ, Pietermaritzburg, October 13, 2010.

buildings, and it is also tribal headmen who usually approach the CLRDC to say that their community needs a CAO and to suggest candidate paralegals for training.

Msomi, a paralegal at the Mpola CAO in KZN, explained that it is important for her to maintain good connections with the traditional leaders in her community if she is to conduct effective mediation strategies, given that it is the norm for people to consult with the headmen when disputes arise as well as with the CAO.<sup>102</sup> To this end, paralegals work hard to ensure cooperation between the CAO and chief's office. John Moerane, Provincial Coordinator of the Northwest Paralegal Advice Office Cluster, for example, drew support from the South African Human Rights Commission (SAHRC) and the Department of Judicial Affairs and Constitutional Development (DJCD) to come and talk to traditional leaders in the Northwest about the Bill of Rights and its ramifications. As a result, a new CAO is being opened at Letlhakane within the chief's office, following the CLRDC model, which Moerane hopes will set a precedent of common engagement between CAOs and tribal authorities in the province. CAOs also involve the traditional authorities in their ongoing community education programs. As recounted by Sophia Tumelo, paralegal at the Phokeng CAO, before approaching the community she first goes to the nearby chiefs' offices at Bethani, Motlhabe, and Lema and asks to participate in their workshops. This approach often leads to profitable collaboration; for example, the Phokeng CAO is currently working with Chief Legwale at Siga Village on a poverty alleviation campaign.<sup>103</sup>

### **Unclear regulatory environment**

Although not apparent from our case-tracking exercise *per se*, a more overarching problem in the sector is the unclear regulatory environment within which CAOs operate. With no formal requirements and no mandatory regulatory oversight, CAOs operate largely unregulated apart from their relationship, where they have one, with the umbrella structures discussed above. There are undoubted advantages to this system, such as allowing a large number of unique, locally specific, and dynamic CAOs to spring up (and flourish or sink). However, the downside is that there is no comprehensive quality assurance or control, meaning that communities are vulnerable to fly-by-night CAOs (although we saw no evidence of this, probably because we primarily observed CAOs affiliated to NADCAO structures). It also undoubtedly impacts negatively on the availability of funding, which is discussed below.

The issue of formal regulation has been extensively debated within the sector. While there are many opponents, including some CAOs and umbrella structures that fear regulation might lead to an over-restrictive definition of paralegal work, other CAOs support such recognition because of its funding implications. NADCAO, for example, has been lobbying for the participation of CAOs in the process surrounding the Legal Practice Bill (LPB). This bill, which was stalled for many years seemingly due to hostility from a legal profession that is skeptical about the role and standing of CAOs, was resuscitated at the end of 2012 and public hearings were held in late February 2013. Among the main objectives of the LPB are more affordable legal services and a restructuring of the legal profession. In its latest iteration, however, the bill does not encompass the incorporation of paralegals. NADCAO, for its part, does support paralegals' incorporation into the legal profession, as it views formal recognition as a precursor to potentially receiving state funding, and it has made written submissions on the LPB stating

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<sup>102</sup> Interview, Msomi, Paralegal, Mpola Advice Office, Mpola – Durban, October 12, 2010.

<sup>103</sup> Interview, Sophia Tumelo, Paralegal, Phokeng Advice Office, Phokeng - Rustenburg, February 14, 2011.

this view.<sup>104</sup> The outcome of the LPB, and especially whether or not it will include paralegals in its ambit, is as yet unclear.

Another regulatory option would be to formally draw CAOs into the LASA structures. This model could enhance sustainability and professionalism within the CAO sector, as is the case, for example, with the Ceres CAO in the Western Cape, which maintains a very close relationship with the Stellenbosch LASA Justice Centre, seeking and receiving regular advice on client matters.

Some paralegals expressed skepticism about this model, complaining about a lack of financial cooperation and the often unreliability of the LASA centers. Yet, from our interviews and observations, it seems there is scope for developing the model and in particular, for improved knowledge sharing in the sector, which could be enhanced through the integration of NADCAO and LASA structures. This could have the potential not only of supporting the greater professionalism of CAOs, but it might be the most cost-effective way for LASA to increase its national footprint and its number of civil cases. For University of KwaZulu Professor of Law David McQuoid-Mason, who supports this model of cooperation between CAOs and LASA, such a relationship should be formalized for the sake of the sustainability of the paralegal sector. For him, “ideally, community-based paralegal services should be funded by the state and integrated into the national Legal Aid scheme via contractual agreements that stipulate that the CAOs provide preliminary advice at the grassroots level.”<sup>105</sup>

Agreeing with McQuoid-Mason, CLRDC Director Langa Mtshali advocates apportioning some of LASA’s annual budget to CAOs, pointing out to the Socio-Economic Rights Institute of South Africa (SERI) that it would cost only 1 percent of the DJCD annual budget (R 1.4 billion for the year 2009–10, of which LASA received R 900 million) to run 230 CAOs for a year.<sup>106</sup> While there are clear concerns regarding the absorption of CAOs by the state administration, integration with LASA, which remains structurally autonomous from government, would provide CAOs with an assured referral mechanism for representation of potential litigants. It would have the additional benefit for LASA of lifting the burden of rights education and thus reducing the number of walk-in clients seeking very basic advice. However, notwithstanding such ideas about how to regularize the sector, with no clear regulatory nirvana in sight, CAOs continue to triumph or flounder in an unregulated environment.

### **Insecure and insufficient funding**<sup>107</sup>

A further hindering factor across the sector—again, more apparent from interviews than from the case-tracking exercise—is that there is currently a funding crisis among CAOs in South Africa. The vast majority do not receive financing from the government for the day-to-day running of their office and since their inception have relied heavily on international donors. However, the donor environment has changed, as donors are increasingly placing their money

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<sup>104</sup> See NADCAO submission on Legal Practice Bill: <http://www.nadcao.org.za/media/532-community-based-paralegals.html>.

<sup>105</sup> Interview, David Mcquoid-Mason, Professor of Law, University of KwaZulu/Natal, October 11, 2010.

<sup>106</sup> Interview, Langa Mtshali, Director, CLRDC, Durban, October 12, 2010.

<sup>107</sup> This determinant is arguably at least partly related to organizational weaknesses in the sector (specifically, the sector’s generally poor management). However, in our view, the absence of funding sits more accurately as a hindering institutional feature that itself impacts negatively on the ability of CAOs to function optimally. In other words, we see the primary causal relationship being that the managerial failures of CAOs are caused by the absence of necessary funding, rather than the other way around (that the managerial failures drive the insufficient funding). However, both determinants obviously interact with each other with negative results.

elsewhere on the continent on the basis that South Africa is now a middle-income country. While arguably understandable, this trend ignores the fundamental structural problem that remains (and indeed is intensifying) in South Africa, namely the enormous and growing divide between rich and poor. It also overlooks the fact that this divide is racially defined, and is as damaging as legislated apartheid. As SCAT Executive Director Joanne Harding explains, “the overt ‘political’ injustice of apartheid attracted foreign interest but in global contexts, economic apartheid under a democratic state is neither attractive nor compelling.”<sup>108</sup>

Nevertheless, the exodus of international donors has affected CAOs predominantly as it has dried up funds for their parent and affiliate organizations such as AULAI, SCAT, and CLRDC/CCJ. These organizations also find South African donors reluctant to engage with them, as they prefer instead to focus on charity rather than social justice. Funding is therefore more erratic, short term, and insecure. SCAT, for instance, currently has 20 funders, but these bring in less income than 10 years ago when there were just six donors. Attaining multi-year funding is a huge challenge, requiring new grant applications every year for grants that tend to support specific projects rather than the day-to-day running of CAOs. The Atlantic Philanthropies is also cutting its endowment fund to the AULAI Trust by 2016, which will make projects like the AJC program hard to sustain.

Indeed, many CAOs have had to close due to lack of funds (for example, SCAT has cut support for 43 CAOs and CLRDC for 37 CAOs), while others operate with minimal resources. CAOs currently generate an income from a variety of sources—local grants, income from community-based projects, donations from community members, government subsidies—some more successfully than others. However, given that CAOs operate in poor communities, they struggle to sustain their operations solely from donations and local income generation. This has led to fragmentation within the sector and a breakdown in information sharing. Moreover, scant resources also mean that CAOs are restricted in their work; the Ceres CAO receives an income of R 6,000 per month (US\$750), R 2,000 from SCAT and R 4,000 from the Office of Consumer Protection within the Department of Economic Affairs. For this latter sum, the office has to see eight clients and hold one workshop per month, and run campaigns to raise awareness of consumer affairs.<sup>109</sup>

Lack of funding also means a cut in paralegal salaries. Community-based paralegals are undoubtedly underpaid for their work, evidenced by the broader extent of their mandate and significantly lower remuneration in comparison to paralegals employed by LASA and litigating NGOs. In addition, salary cuts increase the turnover in staff, leading to a brain-drain in the CAO sector and the loss of capacity as paralegals look for employment elsewhere to mitigate their own hardship. Although the pattern of paralegals using CAO work to springboard political careers has lessened, absorption into state structures is still a threat, given paralegals’ suitable skill set and the draw of better remuneration. Such loss of personnel will create a deficit in the fabric of democracy, with widening gaps in coverage by paralegals and their capacity to build democracy at the local level. While the South African paralegal sector is characterized by passionate and committed community developers,<sup>110</sup> Vivek Maru’s comment about the need for

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<sup>108</sup> Interview with Joanne Harding, Executive Director, SCAT, Cape Town, October 5, 2010.

<sup>109</sup> Typically, one such workshop would cost in the region of R 4,000 (US\$500).

<sup>110</sup> In the words of John Moerane, Provincial Coordinator of the Northwest Paralegal Advice Officers Cluster and lead paralegal of the Lethabong CAO, “I do this job because of having passion, commitment, and trust in the community. It’s not about me, it’s about 50,000 people.” (Interview, Lethabong - Rustenburg, February 14, 2011).

remuneration for the sector globally—that “most paralegal programs which are serious about providing a sophisticated service pay their staff”—remains true in South Africa.<sup>111</sup>

In this context, one of NADCAO’s main current objectives is to attempt to establish a funding mechanism to support the basic operating costs of at least one CAO per municipality (with additional or satellite CAOs if required in the most remote villages). As NADCAO explains, “in order for people in poor and marginalized communities in South Africa to have access to reliable and effective CAOs, the sector requires a sustained and comprehensive national funding mechanism that would support local efforts by the community advice offices themselves to sustain their operations.”<sup>112</sup> Greg Erasmus points to NADCAO’s overarching vision for the sustainability of CAOs as the ultimate manifestation of community self-help,<sup>113</sup> whereby a CAO is hooked in to a mutually supportive framework, including the municipality and local businesses, leading to engagement with provincial stakeholders such as the Law Society, regional government departments, and major provincial industry bodies (for instance, the Consumer Protection Office, Life Assurance Office, or Banking Counsel).<sup>114</sup> The CAO could then enter into service agreements with the relevant organization to secure funds for specific campaigns that would advance the goals of the funder.<sup>115</sup>

For the meantime, though, CAOs face a constant struggle to access secure and sufficient funding, which undoubtedly impairs the reach and quality of their interventions. This is so not least because it means that most CAO offices are one-person ventures, which places substantial strain on the paralegal to cover all the program work, as well as to manage and administer the office. In many cases, the paralegal has to also fund at least part of the work him/herself, as was evident in case 2 above, where the paralegal had to use his own cell phone credit to make the required telephone calls to resolve a matter. These circumstances contribute to a firefighting approach and in all likelihood underlie the generalized lack of proactive or systemic problem-solving we observed during case-tracking, which we expand on in the next section.

### **Reliance on remote urban-based lawyers (including LASA)**

While formalistic legal solutions, and in particular the adversarial approach of lawyers, are not always appropriate, our research indicates that a CAO’s ability to fully resolve all disputes often relies on the availability of an effective lawyer referral network for cases requiring more adversarial efforts, such as in cases 7, 9, and 11 above. Indeed, for the most part, community-based paralegals lack the legal qualifications necessary to represent clients in court should their matters require litigation. Their legal skills are usually acquired informally on the job, and while often precisely tailored for their clients’ needs (see below), there are obvious limitations, especially with respect to formal litigation in the court system. Thus, in order to go beyond civil matters and provide access to justice for clients facing criminal charges, paralegals are reliant on effective referral mechanisms to qualified attorneys. The CAOs within AJC networks are well served in this regard, given the formal system by which visits to the rural offices are conducted and case files taken on. Paralegals at the Black Sash and in CAOs operating in urban areas also have more options in terms of recourse to litigating NGOs and pro bono lawyers. Generally

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<sup>111</sup> Maru, “Between Law and Society” (see n. 42).

<sup>112</sup> See [www.nadcao.org.za/](http://www.nadcao.org.za/).

<sup>113</sup> Interview with Greg Erasmus, former National Coordinator, NADCAO, Johannesburg, January 25, 2011.

<sup>114</sup> It would be here that a centralized structure such as NADCAO would act as a guiding force, identifying suitable stakeholders and providing access to appropriate provincial and national institutions.

<sup>115</sup> Ten advice offices in the Cape recently collaborated to form the Save the Advice Offices campaign, lobbying the Office of Consumer Protection for recognition of the value of the services they provide in connection with the OCP’s work. The support of their communities alone raised funds of R 1.2 million.

speaking, where these relationships are well established they are often successful; referrals from community-based paralegals inform the public interest litigation focus of NGOs,<sup>116</sup> while law firms that mandate their fee earners to commit to a certain amount of pro bono work have a ready case load.<sup>117</sup>

However, these relationships are more precarious when paralegals serve remote, rural communities where sympathetic private lawyers are few and far between and the CAOs lack support structures such as that provided to the AJCs. Frustration occurs when paralegals do not find adequate support from LASA justice centers, leaving their clients no option but to scrape together funds, if they can, to seek out legal advice in the nearest town,<sup>118</sup> despite their growing mistrust of local practitioners who, in the words of one CAO, provide a slapdash service for extortionate fees.<sup>119</sup> The lack of an effective referral system remains an obvious disadvantage for those with matters requiring administrative action,<sup>120</sup> and represents the South African justice system's failure to fulfill sections 33 and 34 of the Constitution enshrining every person's rights to just administrative action and access to the courts system.

Nevertheless, as illustrated in cases 7, 9, and 11, even where CAOs are effectively linked to lawyers, a disconnect can occur when a matter leaves the immediate setting, effectively distancing the client to the point where he or she loses touch with the matter. While this does point to a critique of some lawyers' inadequate efforts to remain in regular communication with clients, it also indicates a greater problem among CAOs: that of ineffective case management and the tendency not to deal with anything other than the first, immediate stage of a matter, which is expanded on in section 6.2 below

There are also several facilitating and hindering organizational determinants, meaning determinants that relate to the way CAOs are organized, operate, and work. We have analyzed as facilitating determinants support of umbrella clusters, as well as social embeddedness and appropriate techniques; and as hindering determinants, limited strategic capacity and weak management systems.

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<sup>116</sup> For this reason, NGOs such as the LRC have an open-door policy for the CAOs in Johannesburg's townships, from whom they frequently accept referrals, offer advice, and include in LRC training workshops when possible. Conversely, community-based paralegals can be negatively impacted by NGOs' strategic litigation approach. NGOs are also affected by the mandates of their funders and are therefore restricted, for instance, in their capacity to take on every unremarkable eviction matter. Interview, Nomfundo Gobodo, Regional Director, LRC, Johannesburg, September 28, 2010.

<sup>117</sup> Pro-bono.org is an NGO that facilitates the placement of matters with private lawyers in South African firms. With a presence mainly in Johannesburg and Mpumalanga, and soon to be collaborating with CAOs in Limpopo and the Northwest, pro-bono.org operates as a clearing house for clients who warrant free legal representation, fielding out such cases to attorneys and advocates within private practice with whom they have cooperation agreements.

<sup>118</sup> According to Schalk Meyer, Director of the AULAI Trust, for many indigent people this is simply not feasible, while for other communities the distances to travel are too great with scant means of transport. One community near Madike in the Northern Cape has a population of 1,000 people, with one taxi and two cars to share among them (interview, Potchestroom, October 25, 2010).

<sup>119</sup> Opinion of Albert Makwela, Provincial Coordinator, Limpopo Community Advice Office Consortium, Tzaneen, October 4, 2010.

<sup>120</sup> All such claims are processed through a singular courts system.

## **Support of umbrella clusters**

One of the defining features of the South African CAO network is the structure of umbrella clusters. It is clear that organizations such as NADCAO, CCJ, CLDRC, and so on, provide much support to the sector, especially in terms of fundraising and lobbying for formal recognition. In many instances, as observed in cases 1, 2, 4, 9, and 11, the support structure also facilitates a referral system for matters that paralegals are not able to resolve on their own. This is critical, especially in the multitude of single-person CAOs across the country. However, it is possible that reliance on this very support and referral structure might ultimately contribute to the lack of proactiveness that we encountered in some of the CAOs, which we elaborate on below. More generally, the precise nature, effect, and value of affiliations to umbrella structures is worthy of closer examination than our study afforded, especially in terms of comparing affiliated with nonaffiliated CAOs, which our study did not do.

## **Social embeddedness and appropriate techniques**

Overwhelmingly, we found that embeddedness in communities was one of the most facilitating of all determinants with respect to South African CAOs. We understand this to cover many of the more “soft” skills of paralegals that we believe derive from living in the community served by paralegal work. Indeed, we did not witness any negative aspect arising from the proximate location of paralegals to their work—as hypothesized in this project’s overall rubric. Rather, we saw ample evidence of the overwhelmingly positive impact of this close social location, which resulted in attuned sensitivity to local issues combined with an extraordinary capacity to go the extra mile for clients.

In many of the cases we tracked, as well as from our broader interviews, we experienced and were told about paralegals who combined the skills of psychologist, social worker, public servant, and paralegal. We are convinced that this holistic approach is facilitated by the similar and proximate living conditions and spaces between paralegals and clients (even where the geographic distances might be relatively wide), which promotes empathy and enables paralegals to go beyond formal methodologies, as illustrated in the case study set out at the beginning of this paper, as well as in cases 4 and 5 above. Evidently, living within the community (or having lived in such circumstances) facilitates an understanding of the dynamics of that community and the value of social harmony in a way that remote lawyering does not. Whatever formal incorporation and/or regulation occurs within the sector, we hope that it is not to the detriment of this somewhat intangible but overwhelmingly positive feature of paralegal assistance.

Social embeddedness, as well of course as not being trained and entitled to act as registered lawyers, means that paralegals frequently use mediation techniques. When compared with litigation, mediation is a more informal legal procedure that is often most appropriate for inter-community disputes, as evidenced in cases 10 and 12 above. Particularly in rural CAOs, paralegals resolve disputes by negotiating with both parties until a settlement is agreed, and only then going to the magistrate to set down the agreement. This type of settlement is often a more durable solution than the court could implement by itself, and magistrates frequently ask paralegals to mediate in advance to make the system work more smoothly.<sup>121</sup>

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<sup>121</sup> Interview with Winnie Kubayi, Director, CCJ, Pietermaritzburg, October 13, 2010.

The paralegals we interviewed recognized the intrinsic value of creating authentic, lived solutions at the grassroots level within their communities, and not simply to refer matters to lawyers for litigation. Indeed, Bheki Shange, a coordinator at one paralegal office, explained to SERI that he wanted the case referral figure to be as low as possible, given that “the nature of the case may not be appropriate for an attorney, the clients may prefer to use a paralegal as a go-between, and in any case, mediation is the best tool for conflict resolution as it allows people to decide the matter for themselves rather than having an imposed solution.”<sup>122</sup> It is for this reason that community-based paralegals have a good relationship with the courts, as mediation as a precursor to litigation promotes harmonious reconciliation, and means that clients often go to court with a ready settlement agreement. In this way, paralegals within CAOs work to painstakingly build the democratic capacity of their communities brick by brick and question by question.

### **Limited strategic capacity**

One of the most notable observations from our research is the limited capacity of CAOs to abstract or strategize beyond an immediate firefighting approach to routine cases. As such, the paralegals we monitored appeared unable, unwilling, or uninterested in seeking systemic solutions to everyday problems. Rather, they relied on rolling out the same solutions to frequently occurring problems, such as the wrongful termination of social security benefits, which often involve a mere phone call or the completion of a form. Thus, we were struck, especially through the experiences of cases 1, 2, and 8, by the fact that the paralegals had not considered engaging in information sharing or workshops with the communities they serve in order to educate the public about how to resolve such simple cases, and thereby to lessen their load. A related feature of this nonstrategic approach was the paralegals’ more generalized failure to explain each step of the process to the client, meaning that the client would probably have to come back to the paralegal if the same or similar problem arose again.

In addition, alongside this vacuum with respect to empowering the public to deal with matters themselves, we noticed a certain disempowerment in some of the paralegals in terms of taking matters beyond the first phase of telephone calls or form completion. For example, in case number 2 concerning unemployment benefits, the matter was significantly delayed because the paralegal did not know how to escalate the matter without external assistance. Here, we saw a role for better information sharing and education from the umbrella clusters. Further research is necessary to delve into these issues, but it is possible that the degree of passivity we witnessed might relate to paralegals’ attempt to safeguard their position by not sharing knowledge. Alternatively, it might relate more structurally to limited funding (outlined above) and/or a weakness in the existing management training programs offered by NADCAO and the other umbrella structures.

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<sup>122</sup> Interview with Bheki Shange, Provincial Coordinator Gauteng Paralegal Advice Office Forum, Soweto, October 19, 2010, discussing his experiences in the maintenance court, part of the magistrates’ courts’ jurisdiction. Likewise, John Moerane, Provincial Coordinator, Northwest Paralegal Advice Office Cluster, Lethabong, February 14, 2011, explained to SERI how at Lethabong CAO, the paralegals help women complete protection order claims, ensuring that clients understand the process before going to the domestic violence court at the magistrate’s court in Rustenburg.

## Weak management systems

Our research interviews indicate that there is a generalized weakness in management systems across the sector, which means that individual CAOs, especially the smaller ones in rural areas, struggle with the technical requirements of external donors. The big foreign donors in particular have onerous proposal and reporting requirements that can be crippling to small, understaffed organizations. Typically, the proposals require access to technology, good written English, and the ability to draw up comprehensive budgets. The reports also require constant monitoring and evaluation, and considerable capacity. Such reporting requirements are made more burdensome by the fact that many CAOs do not yet have an effective case log system, making it difficult for paralegals with a waiting room full of clients each day to properly document every client, issue, and resolution. For example, the CCJ is six years behind in its reporting, purely due to time restraints, and told us that it has had to accept anecdotal reporting to make the task less onerous for their paralegals.<sup>123</sup> Concerns over funding also mean that CAO paralegals spend too much of their time preoccupied with raising enough money to cover their operating costs. A vicious cycle thus ensues, whereby CAOs' lack of funds inhibits their chance of sourcing funding in the future and limits their productivity.

Institutionalization, in this sense, is certainly an aspiration for community-based paralegals working with CAOs. However, as CLRDC Director Langa Mtshali explains, enormous infrastructure and capacity-building needs are required for CAOs to be able to cope with the demands of "independence."<sup>124</sup> Msomi, paralegal at the Mpola CAO, agreed, stating that CAOs need better knowledge of fundraising, management, and drawing up constitutions and cooperation agreements before making that leap.<sup>125</sup> To this end, training for community-based paralegals needs to be more consistent across the board, and more frequent. According to Joanne Harding, "we need to move away from the idea that informal training is enough and increase the professionalism of the sector."<sup>126</sup> More uniform training would prevent CAOs from being so reliant on their individual staff members, and limit the damage caused by personnel changes.

In terms of increased knowledge sharing, an effective case management system would also be of substantial benefit to CAOs. Just as the Black Sash database captures trends from its casework and feedback on best practice techniques, a case log system accessible by the NADCAO CAO network would be an invaluable training resource and cross-regional research tool by which to identify patterns in socioeconomic problems to create advocacy campaigns. It would also provide the quantitative data required for funding proposals. Such a case management system has been put in place by NADCAO and trialed in certain CAOs. NADCAO's Central Case Management System is Internet-based; paralegals input data onto a computer and later upload it onto the Internet to be accessed by the centralized data capturer. However, with very low information technology connectivity and limited access to computers in most rural CAOs, the roll-out of the system has had limited success, and NADCAO is exploring ways to circumvent the connectivity challenges.

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<sup>123</sup> Together with the CLRDC, the CCJ want to document their work, properly measuring the impact of a case resolution on a family or community by recording the number of people involved in it.

<sup>124</sup> Interview with Langa Mtshali, Director, CLRDC, Durban, October 12, 2010.

<sup>125</sup> Interview with Msomi, Paralegal, Mpola Advice Office, Mpola – Durban, October 12, 2010.

<sup>126</sup> Interview with Joanne Harding, Executive Director, SCAT, Cape Town, October 5, 2010.

In many respects, South Africa represents a triumph of form over content. The institutional frameworks for access to justice could not be more favorable. There is a right of access to courts and a right to legal assistance at state expense in criminal matters where “substantial injustice would otherwise result,” and there are certain institutional options for legal aid as well as NGOs and the like.

Yet, as our research has highlighted, beyond law and policy, there are real problems related to the need for and the (un)availability of legal assistance, especially in rural areas. The formal justice system clearly cannot provide the kind of assistance required by poor people to fully realize their human rights without the support of community-based paralegals. This is particularly the case in rural areas, where non-lawyers remain the only conduit for indigent and marginalized communities to afford equal access to justice.

This study has highlighted the critical contribution that South African paralegals make in advancing access to justice. This is done in ways that straddle not only different pluralities between modernity and tradition, but also different modes, with paralegals taking on a quasi-welfare and community-sensitive role in dispute resolution, as well as acting as a critical bridge between state and society in assisting communities to access services and goods. As such, paralegals are contributing substantially to attempts to consolidate South Africa’s fledgling democracy.

However, beyond the facilitating support from umbrella organizations and the high degree of relevance and appropriateness of CAOs to local contexts, the sector is struggling with real problems. Without formal regulation or recognition, CAOs face the twin problems of insufficient funding and inadequate training, which in turn, often prevent paralegals from taking on more strategic, proactive empowerment on behalf of the communities they serve. To realize their potential, it is imperative that CAOs receive further financial and training support and that the issue of their regulation is speedily settled. Continued failure to resolve these issues will squander the sector’s contributions that have been built up through decades of struggling for better conditions, and thus undermine the very fabric of South Africa’s democratic project.

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