

SOUTH AFRICA

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LAW IN ACTION

IN THE AGRICULTURAL TOWN OF CERES, in South Africa's Western Cape province, the Witzenberg Rural Development Centre (WRDC) works primarily with poor farmworkers and their families, with a focus on the provision of early childhood services. Since 2013, its work has also included providing poor local farmworkers and their families with free advice on dealing with a range of everyday problems: resolving disputes with local farmers over employment terms or housing; helping families get proper access to government benefits; helping individuals negotiate the legal complexities of bereavement or illness. A team of paralegals at the Ceres office answers about 12-15 enquiries and open between 8-10 files daily. When the centre's monthly drop-in legal clinic is open, it sees approximately 40 clients per day.

WRDC is one of over 300 Community Advice Offices (CAO) operating across South Africa's nine provinces, which provide the backbone of the country's developing legal services sector.

CAOs are non-governmental organisations that play a vital role in providing services particularly in rural areas where government institutions and departments are not available, or where government service points are a considerable distance away. It is especially within these rural areas where CAOs not only provide justice-related paralegal services, but also fill the gap of providers of service information and facilitators of access to services provided by, amongst others, private institutions and the Departments of Social Development, Labour, Health and Local Government.

Most offer the similar range of services to those provided by WRDC; some serve particular vulnerable groups—the Women's Legal Centre and the Sex Worker Education and Advocacy Taskforce (SWEAT) has pioneered a sex worker paralegal program that is a model in the region; the Hospice Palliative Care Association (HPCA) has pioneered legal empowerment for palliative care patients, which has also inspired work throughout the African continent.

When a CAO client requires court representation, or is involved in criminal proceedings, they may be referred to a legal aid center run by the Legal Aid South Africa; CAOs may also turn for support to a number of University and NGO law clinics which provide a more specific focus such as on refugee rights, land rights, labor disputes, or social grant payments. These law clinics have developed productive partnerships with CAOs and in many contexts provide training for CAO staff, as well as options for CAO referrals.

HISTORY

South Africa's CAOs and legal services sector can trace its history back to the years of apartheid, when members of the non-white community faced

community justice

SOUTH AFRICA

a judicial system that endorsed racially exclusive legal structures. Some CAOs were, in fact, initially conceived as African National Congress (ANC) constituency offices, helping to address the specific injustices of the time. The modern CAO movement gathered momentum in the 2000s, as the country sought to address the deep social and economic inequalities that were part of the legacy of the apartheid years.

ORGANIZATION

The 1994 South African Constitution enshrines the right to choose and consult one's own counsel, and to legal aid at the State's expense, 'if substantial injustice would otherwise result'. But there is no direct constitutional requirement for the provision of legal services in non-criminal issues.

The role of providing criminal legal aid is handled by Legal Aid South Africa (LASA), the independent, state-funded, institution responsible for the provision of legal aid, mostly in the form of legal representation in criminal matters. LASA employs over 2,000 legal practitioners, at more than 60 justice centres and satellite offices, many based in court buildings.

In contrast, the CAO system is funded by donors—both international and local. The structure of the system reflects its origins as collection of individual community-based groups. Most are led by local boards.

Efforts to give the CAO a national voice led to the creation of the National Alliance for the Development of CAOs (NADCAO) in 2005, followed by the Association of CAOs of South Africa (ACAOSA) in 2013, a membership organization which is establishing national and provincial governance boards and which will become the primary national voice for the CAO networks. The objectives of these national bodies includes establishing minimum governance standards for CAO management committees, which would include mandatory training in human resources and finance and other management needs.

In addition to the support structures created by NADCAO and ACAOSA and the financial support provided by donors, some NGOs in South Africa provide technical and financial support to clusters of CAOs in different provinces in South Africa. For example The Centre for Community Justice and Development (CCJD) is a non-profit organisation which provides fundraising, training, research and other support services to fifteen community-based advice offices in KwaZulu-Natal, South Africa. Similar support organisations operate in other South African provinces

OVERSIGHT

The Legal Practice Act of 2014 set up a new Legal Practice Council to oversee the provision of legal services in South Africa – the Act failed to grant the statutory recognition of the role of paralegals in the provision of legal advice in the justice system that CAOs were hoping for, which would enable them to represent clients before magistrates and other lower courts. But the act did require the Council to address this issue and to report back to the government in 2016. The move to formal recognition is back on the agenda. ACAOSA has prepared a draft model law, which has been shared with the Department of Justice and members of Parliament. Although not a formal Bill, this process is being used to engage with relevant state officials, who have welcomed the support from civil society and CAOs to propose a regulatory regime. CAO advocates are putting in place an inclusive consultative process at a provincial level to ensure that regulation responds to local needs. In April 2016, institutionalization received an additional boost following South Africa's commitment to work towards the institutionalization of CAOs in its OGP National Action Plan.

FUNDING

The fragmented nature of the CAO network makes it difficult to cite exact figures for annual spending in the sector. Funding for NADCAO and ACAOSA comes from both international and local donors, including the CS Mott Foundation, the Foundation for Human Rights, Open Society Foundation for South Africa, the RAITH Foundation, HIVOS, the National Lottery Board and the Social Change Assistance Trust.

IMPACTS

It is difficult at this stage to get precise and up-to-date data on the sector. There are approximately 350 CAOs scattered across the country of which the National Alliance estimates 200 are active with basic management processes in place. At an ultra-conservative rate of cases per week, each advice office processes an estimated 240 cases per year so an approximate total of 84 000 per year for the sector as a whole.