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Scaling Access to Justice Research Collaboration

BRIEF 1:
EXECUTIVE SUMMARY

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Ten briefs have been prepared to report on different aspects of the study.

This Executive Summary is the first of these briefs.

Context of the study. In South Africa, community advice offices (CAOs) and community-based paralegals (CBPs) constitute a complex community-based justice system. Recent studies show that there are over 3 000 CAOs across South Africa.¹ CAOs deliver a wide range of free socio-legal and socio-economic services to marginalised and vulnerable communities, including women and children. CBPs operate and manage these offices in urban, peri-rural and rural hinterland areas. CBPs often work in conjunction with the formal and customary justice systems and network with various government departments, non-governmental organisations (NGOs) and the private sector when delivering legal services.

CAOs are usually registered as community-based organisations (CBOs) or non-profit organisations (NPOs). They use a range of structural and financial models: some function as stand-alone CBOs; some are affiliated with university law clinics; some with intermediaries; and still others work in liaison with ‘umbrella’ non-governmental organisations. At the time of this report, there is no formal recognition or regulation of CAOs and CBPs under South African law and there are no institutionalised arrangements for funding these services in place. While a draft policy paper on the recognition and regulation of the CAO sector has been in the legislative pipeline for a few years, there is still no statutory support undergirding the sustainability of the sector and CAOs rely on self-regulation and donor support to sustain themselves. Despite this, CAOs have gained legitimacy through the informal recognition they receive from other institutions and organisations (both formal and traditional) and by the community members who access their services.

Background to the study. The CCJD (2018) OSJI research project revealed that unsustainable funding models and a lack of statutory recognition obstruct the delivery of justice services; that lawyer-led legal aid and CBP-led CAOs are not competitive but complementary; that African epistemologies are embedded in the delivery of justice services delivered by CAOs and CBPs; and that CAOs and CBPs would benefit from government recognition and regulation but need to retain their autonomy in order to protect the responsiveness and flexibility that are the hallmarks of their approach to meeting the needs of the communities they serve.

The CCJD (2018) OSJI project was limited to the two CAOs operating under the umbrella of CCJD in KwaZulu-Natal (one of South Africa’s nine provinces). Not all CAOs are structured as part of an umbrella model or operate with an umbrella funding model. Some CAOS work with NGOs and use models such an intermediary funding model or law school clinic structural model. Other CAOs are

structured as stand-alone organisations that handle operations and fundraising independently. The CCJD OSJI research project identified an evidence gap in terms of how CAOs operating under structural and financial models *other* than the umbrella model deliver services when assisted by different types of NGOs or law school clinics or work independently.

Purpose of the study. This study was undertaken to extend the scope of the CCJD OSJI research project to investigate CAOs using different structural and funding models. This study included ten CAOs located in five of South Africa's provinces. The study investigated six key aspects of the CAOS: the structural and financial models they use (Brief 4); the costs and benefits associated with their services (Brief 5); their case management systems and functionality (Brief 6); the role of African indigenous knowledge in their activities (Brief 7); the recognition, regulation and institutionalisation of the CAO sector (Brief 8); and the role of network governance in the activities of the CAOs (Brief 9).

The objectives and sub-objectives of the study were to:

1. Conduct cost-benefit analysis of the CAOs.

- Provide a cost benefit analysis of CAOs across four CAO structural models.
- Discover the funding mechanisms suitable for distinctive CAO models.
- Assess case management strategies of CAOs with distinctive structural models.
- Conduct a comparative analysis of CAO/CBP functionality and justice service delivery in light of three CAO structural models.

2. Develop any evidence-based arguments regarding financial and human capital sustainability for and appropriate regulation and institutionalisation of the CAO sector.

- Capture and analyse perspectives of CBPs on statutory recognition, regulation and institutionalisation of the CAO sector.
- Capture and analyse perspectives of service recipients on statutory recognition, regulation and institutionalisation of the CAO sector.
- Capture and analyse perspectives of managers of organisational affiliates on statutory recognition, regulation and institutionalisation of the CAO sector.

3. Advance African ways of knowing justice and governance in furtherance of Sustainable Development Goal 16.

- Apply an African epistemological lens to the Inputs-Activities-Outputs-Outcomes-Impact analytical model devised by CCJD in an earlier study.

- Assess whether and if so, how CAOs address socio-legal needs of women through traversing parallel legal systems when accessing justice at CAOs.
- Identify process indicators on CAO client experiences that capture socio-cultural appropriateness on its own merit.

4. Establish the role of network governance by CAOs regarding the facilitation of effective access to justice.

- Comprehend the complementariness of CAOs and CBPs to government and non-governmental organisations and the private sector, or lack thereof.
- Determine how cross-sector responsiveness to CAO modalities of access to justice can improve.

5. Determine how to empower the CBP voice from a focus on basic justice services delivery to articulation of CAO sector advocacy and reform.

- Harness the CBP voice, which is largely a female voice, on CAO sector advocacy and reform that strengthens justice services delivery.
- Extract the role of gender in CAO and CBP advocacy and reform, if any.

Methodology of the study (Brief 2). A mixed-method design was used to allow a comprehensive analysis of interrelated social processes, drawing on the strengths of both quantitative and qualitative approaches. A community-based participatory research (CBPR) approach informed the study. A descriptive, exploratory and explanatory embedded multiple case strategy was used. Ten CAOs, located in five of South Africa's provinces, were selected; from these, 24 CBPs were selected for interviews and 202 service recipients were selected for focus groups. Case narratives were selected at each CAO for analysis based on their relevance to the research objectives. CAO affiliates were selected on the basis of representation of each structural model identified. The study employed three data analysis techniques appropriate for mixed-methods research: matrix (or logical) analysis, interpretive phenomenological analysis (IPA) and specific analytical techniques. Data gathered from different data sources was analysed comparatively for each CAO, per province, and across the ten CAOs.

Profile of the 10 CAOs (Brief 3). A profile was developed for each CAO outlining its history, context, organisational and staffing structure, and the programs and activities it facilitated. Visual documentation and written observations were also captured by the research team during site visits.

The findings of the study on the six key aspects that were investigated are reported in Briefs 4 – 9.

Structural and financial models in the CAO sector (Brief 4). The study revealed that different models were used for the structuring and financing of the CAOs; this distinction must be recognised in the sector. The structural model speaks to the formation, management, governance and operations of the CAO, while the financing model relates to the funding of activities. Two different structural models were identified among the ten CAOs in the study: the stand-alone model and the umbrella model. The CAOs with a stand-alone structure used a mixed financing model, while the CAOs operating under an umbrella structure received funding through this umbrella structure, and thus used an umbrella financing model. It was found that the stand-alone CAOs could not raise adequate financing using one model. A hybrid financing model, combining stand-alone, intermediary, public, law clinic and CAO collaboration financing models, proved to be working in the sector. Often, the funding that was offered favoured programmes other than the core business of the CAOs (legal advice), with the result that the legal advice activities were often underfunded. The financing models available to stand-alone CAOs may also limit the scope of their work as a significant amount of staff time must be allocated to fundraising.

Cost-benefit analysis of the services of the CAOs (Brief 5). A cost-benefit analysis was conducted of the services provided by the ten CAOs, with both quantitative and qualitative components. The direct and indirect, and tangible and intangible, costs and benefits associated with the services provided by the CAOs were quantified using administrative data recorded by the CAOs for the period 2016 to 2018. The highest costs were found to be the direct intangible costs represented by the opportunity cost of foregone income. The most significant benefit was found to be indirect intangible benefit accruing to the clients in the form of ‘individual cost savings’ and ‘willingness to pay’. Nine of the ten CAOs recorded a positive net value. Eight had a benefit-cost ratio greater than one – attesting to the viability of the CAOs. The two CAOs operating with umbrella structural and financing models had ratios greater than two, which could be attributed to characteristics associated with these models – particularly that these CAOs did not have to allocate time to fundraising as the parent organisation handled this function. The qualitative analysis identified numerous additional intangible costs and benefits, as well as social and quality of life impacts, that the quantitative analysis did not detect. While the CAOs offered their services at no charge, a range of tangible and intangible costs and benefits arose in the delivery of service. The analysis found that the benefits outweighed the costs, however.

Assessment of the case management systems and functionality of the CAOs (Brief 6). Case management systems (CMS), or administrative practices, are seen as key to the sustainability of CAOs in the literature. The study found that the CAOs using a stand-alone structure used a manual, paper-

based record-keeping system complemented with whatever templates their current funders required them to use. Their documentation included biographs of clients and summary statistics for different activities. Their documentation of narrative data for their cases and of actions and follow-up on the cases was weak. The two CAOs that fell under an umbrella model, on the other hand, used an electronic database with structured templates for capturing each case that was networked to the ‘parent’ organisation.

The role of African indigenous knowledge in the activities of the CAOs (Brief 7). Sustainable Development Goal 16 acknowledges that access to justice may come about through diverse forms. In the South African context, African approaches to understanding and accessing justice are integral to the communities served by the CAOs. The recognition and integration of these indigenous justice systems is vital to the decolonisation of communities and structures. Participatory research methodology engages research participants as co-researchers, rather than only as research subjects. Participatory research approaches also advocate that decolonising research does not only apply to methodology but also involves opening spaces for local knowledge and experiences to be exchanged. This study engaged with these principles of participatory research by inviting recipients of the CAOs’ services to participate in focus groups. A significant amount of data on African approaches to justice emerged through the case narratives (database), focus groups and interviews with the CBPs in this study. The data revealed that indigenous culture is vitally important to the clients of the CAOs in all spheres of their lives. The fact that CBPs were members of the same community as their clients enabled them to understand their language, customs and broader cultural context deeply and address the issues that arose in this context with insight and respect. CBPs, however, face the challenging of reconciling indigenous traditions – including understandings of, and approaches to, justice – with the very different, and dominant, world of formal law. Dealing with this legal plurality requires a depth of knowledge of both systems and the ability to work harmoniously with both systems to achieve outcomes to clients’ issues which do not just satisfy the formal law but resolve the issue meaningfully for the client on the terms of their indigenous context.

Recognition, regulation and institutionalisation of the CAO sector (Brief 8). The role that CAOs, and the CBPs that work for them, play in promoting human rights and advancing social justice in this pluralistic legal context remains largely unrecognised and unregulated in South Africa. This study investigated the kind of recognition and regulation that would be needed to strengthen the capacity of CAOs and CBPs to render services to marginalized people who may otherwise not access justice. Brief 8 presents a comparative analysis of narratives from CBPs and focus groups of service recipients across the ten CAOs and presents a cross-case comparison of CBP and service recipients’ perceptions regarding regulation and recognition. The study found that the regulation of the CAO sector would

strengthen the position of CAOs and CBPs significantly. Specifically, regulating the sector would: (1) consolidate the impact and role of the CAOs and community-based paralegals in ensuring access to justice in South Africa; (2) contribute to the sustainability and growth of the CAO sector; (3) professionalise and formalise the CAO sector and the role of the CBP; (4) provide accountability mechanisms, both vertically and horizontally; (5) develop systems and solutions for communal learning; and (6) create a platform for ongoing interaction between government and other stakeholders.

The role of network governance in CAO activity (Brief 9). There has been limited research on the role of CAOs in network governance to facilitate expedient access to justice in South Africa. The study found that the CAOs, and their CBPs, carried out their activities in partnership with various stakeholders through an informal, and loosely-structure network that had developed gradually, primarily through referrals by CBPs and to CAOs (often by formally-recognised institutions) as the need arose. Despite the informal nature of the connections between these network partners, there was a degree of coordination between them, evidenced by their ability to act collectively to organise workshops or events or invite partners to participate in their activities. Formal institutions in the network were found to benefit from the facilitation and presentation skills that CBPs were able to offer during awareness campaigns.

The comparative findings, conclusions and recommendations of the study are presented in Brief 10.