

# **JOINING FORCES FOR THE POOR:** Alliance-building for social justice in South Africa and the story of the National Alliance for the Development of Community Advice Offices



## **Case Study**

Commissioned by The Atlantic Philanthropies

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*Front cover photograph: NADCAO ©*

# Abbreviations

|                           |  |
|---------------------------|--|
| <b>ANC</b>                | African National Congress  |
| <b>AULAI</b>              | Association of University Legal Aid Institutions   |
| <b>CAO</b>                | Community advice office  |
| <b>CBO</b>                | Community-based organisation   |
| <b>CCJ</b>                | Centre for Criminal Justice  |
| <b>CCMS</b>               | Central Case Management System   |
| <b>CLRDC</b>              | Community Law and Rural Development Centre   |
| <b>CS Mott Foundation</b> | Charles Stewart Mott Foundation  |
| <b>CSO</b>                | Civil society organisation   |
| <b>DOJ&amp;CD</b>         | Department of Justice and Constitutional Development   |
| <b>FHR</b>                | Foundation for Human Rights  |
| <b>ICJ-S</b>              | International Committee of Jurists - Swedish Section   |
| <b>KCHR</b>               | Karoo Centre for Human Rights  |
| <b>LASA</b>               | Legal Aid South Africa   |
| <b>NADCAO</b>             | National Alliance for the Development of Community Advice Offices                            |
| <b>NCBPA</b>              | National Community Based Paralegal Association   |
| <b>NDA</b>                | National Development Agency  |
| <b>NGO</b>                | Non-governmental organisation  |
| <b>NPI</b>                | National Paralegal Institute   |
| <b>NPO</b>                | Non-profit organisation  |
| <b>NSC</b>                | National Steering Committee of Community Based Paralegals and Advice Offices in South Africa |
| <b>RULAC</b>              | Rhodes University Legal Aid Clinic   |
| <b>SCAT</b>               | Social Change Assistance Trust   |
| <b>SIDA</b>               | Swedish International Development Agency   |
| <b>UKADA</b>              | Upper Karoo Advice and Development Agency  |

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## Disclaimer

The views and opinions expressed in this report are those of the author and are not necessarily shared by The Atlantic Philanthropies.

# I. Introduction



*Farmworkers are among the most vulnerable, and community advice offices often play an important role in enforcing their rights*

The National Alliance for the Development of Community Advice Offices (NADCAO) is a fairly recent initiative to strengthen the community advice office sector and broaden access to justice in South Africa.

Community advice offices (CAOs) and paralegals have been part of the social and political landscape in South Africa since the 1930s. Over the years, they have provided much needed services to millions of poor and marginalised South Africans. Today, advice offices are essential for realising democracy. They play a primary role in translating human rights as enshrined in the South African Constitution into reality. Despite this, however, the community advice office sector has struggled for recognition and support.

**A community advice office** is a community-owned non-profit organisation, usually staffed by a community-based paralegal who provides free legal advice, information and support to members of poor communities and sometimes work with attorneys to take matters to court for adjudication. Issues dealt with at a community advice office include unfair labour practices, maintenance claims against absent fathers by abandoned mothers, access to social security grants – such as pensions and child support grants – illegal evictions by landlords and farmers, land claims and many others.

**Community-based paralegals** are often volunteers who have basic knowledge of the law, and of legal and conflict resolution procedures. They provide administrative, investigative and other forms of legal support. Paralegals have different types of legal training (including several accredited certificates and diplomas) offered by a number of organisations that have emerged to support and provide services to community advice offices. Currently, community-based paralegals in South Africa may offer direct legal advice to clients, but may not represent clients in court.



*Community advice offices assist clients to apply for official documents, such as IDs, birth and death certificates – often a critical first step in accessing social grants*



*Parents and caregivers can get help from community advice offices to access child support grants*

**Photograph:** United Nations ©

NADCAO was established to bring some stability to a fragmented, under-resourced and vulnerable sector and empower it to fend for itself. NADCAO is a unique and innovative response to the woes of the South African advice office sector because it brings donors and non-governmental organisations (NGOs) supporting and working with CAOs into an alliance based on a joint commitment to share and unlock resources for an entire sector.

As a case study on alliances and alliance-building, this report documents and discusses NADCAO's journey so far and offers opportunities for learning to other parts of the development sector in South Africa and further afield. While context and characteristics differ, development organisations and sectors across the world are feeling the pinch in a difficult financial climate and are likely to be grappling with issues of responsiveness and sustainability.



## II. Methodology

This case study draws on a review of internal documents from the National Community Based Paralegal Association (NCBPA), the National Steering Committee of Community Based Paralegals and Advice Offices in South Africa (NSC) and NADCAO, as well as other research on the South African advice office sector. However, it is mostly based on in-depth interviews with key stakeholders, identified in collaboration with former NADCAO National Coordinator Greg Erasmus. A list of interviewees is included at the end of the case study.

As the research unfolded, a feedback workshop was held with Nomboniso Maqubela (Interim NADCAO National Coordinator), Joe Japhta (NADCAO Programme Coordinator), all available members of NADCAO's Steering Committee, and The Atlantic Philanthropies. A draft of the case study was then circulated to a core group of stakeholders for comments, including NADCAO staff and Steering Committee members, the Charles Stewart (CS) Mott Foundation and The Atlantic Philanthropies, before finalisation.

Some limitations need to be noted. It was not feasible to cover NADCAO provincial forum developments in all of South Africa's nine provinces. Consequently, three provinces were chosen to illustrate different scenarios, challenges and experiences, namely KwaZulu-Natal, the Eastern and the Western Cape.

Secondly, a few stakeholders, although approached, were not interviewed. The views and voices of Ithembalabantu and the chairperson of the provincial forum in the Western Cape could therefore not be included in this case study. Also, when the interviews were conducted (in 2011), it proved impossible to interview provincial forum leadership in the Eastern Cape as it was in a state of flux.

Thirdly, some stakeholders were not available for the feedback workshop – notably the Black Sash and Greg Erasmus – and only a few of the key people who were asked to comment on the draft version of the case study did so. In addition, during the commenting process, some interviewees requested that certain statements they had made in their interviews be retracted or not attributed directly to them. This was acknowledged and respected.

Lastly, as this case study was completed in September 2012, more recent developments – for example, around legislation or NADCAO's provincial fora – are not discussed here.

# III. Some historical background and context

## Government and the community advice office sector

The existence of paralegals and CAOs in South Africa dates back to the late 1930s. The Legal Aid Bureau was set up in Johannesburg in 1937, followed by other organisations offering paralegal services, notably the Black Sash in 1955.<sup>1</sup>

The 1980s, marked by an increasingly repressive apartheid regime and escalating political violence, saw an unprecedented growth in the number of CAOs in townships across the country. Some had strong links with the United Democratic Front<sup>2</sup> – many present-day high-ranking African National Congress (ANC) officials, for example, worked as paralegals in CAOs<sup>3</sup> – and organisations such as Lawyers for Human Rights and the Legal Resources Centre emerged to support the burgeoning sector. Working during the dark times of apartheid, paralegals and CAOs provided critical legal, development and welfare advice and assistance to South Africa's many marginalised and impoverished communities.<sup>4</sup>

<sup>1</sup> Community Agency for Social Enquiry, *Paralegals and Advice Offices: Progress and Challenges in the Development of Access to Justice in South Africa*, CS Mott Foundation: 2000.

<sup>2</sup> A non-racial coalition of some 400 civil society organisations launched in 1983 and one of the most important anti-apartheid organisations of the 1980s.

<sup>3</sup> Among them, Dullah Omar and Penuell Maduna, who went on to become Ministers of Justice in post-1994 ANC-led governments.

<sup>4</sup> Berggren, B & Pigou, P, *Legal Aid Evaluation*, SIDA: 2000.



During the dark times of apartheid, paralegals and community advice offices provided critical legal, development and welfare assistance to South Africa's many marginalised and impoverished communities.

In the 1990s, at the start of the democratic negotiations, the ANC recognised the vital role that paralegals and CAOs played during apartheid. In July 1990, Penuell Maduna, a senior ANC official (and later Minister of Justice) stated that paralegal organisations

*will be part and parcel of the building materials that we will use to construct a new society and develop a new legal system [where they] will help the people understand and protect their rights, freedoms and interests and make justice eventually accessible to the ordinary indigent person.*<sup>5</sup>

As the first democratic government took office in 1994, and with a country looking forward to a progressive Constitution entrenching human rights for all, the moment for proper acknowledgement of paralegals and advice offices seemed to have arrived. While the advice office sector was going through turbulent and uncertain times, the right to access to justice was coming to the fore. The Constitution, in its *Bill of Rights*, set out a number of socio-economic rights central to addressing poverty and inequality. The *Bill of Rights* charged state institutions to “respect, protect, promote and fulfil”<sup>6</sup> these rights. This required fundamental transformation of the way in which justice was administered and concerted efforts to facilitate access to justice for all South Africans. In short, the Constitution and the *Bill of Rights* opened up ample opportunities for paralegals and the advice office sector to be incorporated into a new judicial framework and infrastructure.

Taking this forward, Dullah Omar (Minister of Justice 1994-1999) initiated *Justice Vision 2000*, presented as a strategic plan for the transformation of the legal justice system to make it more diverse and accessible. *Justice Vision 2000* was based on input from consultations with civil society, including NGOs, community-based organisations (CBOs), legal professionals and experts.<sup>7</sup> The Vision included calls for improved use of paralegal structures as part of government's access to justice strategy<sup>8</sup> and paralegals were invited to join the Transformation Task Team.<sup>9</sup>

*Justice Vision 2000*, however, did not amount to a policy document for the advice office sector. Some saw the Vision as too theoretical and not providing sufficient guidelines for implementation.<sup>10</sup> It was also criticised for looking more like a ‘wish list’ than a robust plan with prioritised strategic interventions.

<sup>5</sup> Quoted from Community Agency for Social Enquiry *op.cit.*, page 2.

<sup>6</sup> *Constitution of the Republic of South Africa, No. 108 of 1996*, Chapter 2, Section 7(2).

<sup>7</sup> Stack, L & Soggot, P, *Enhancing Policy Implementation: Lessons for the Justice Sector*, Centre for Policy Studies: 2001.

<sup>8</sup> Ministry of Justice, *Justice Vision 2000 – Five Year National Strategy for Transforming the Administration of Justice and State Legal Affairs*, 1997, Section 4 (Access to Justice).

<sup>9</sup> NCBPA, *Comments on Second SIDA Review of the Access to Justice Programme in South Africa*, undated.

<sup>10</sup> Stack & Soggot *op.cit.*



Hajiera Davids (right) from the Heideveld and District Advice Office in Cape Town, with radio presenter Bassie Montewa. Hajiera Davids went on Bush Radio (a community radio station) in September 2012 to voice NADCAO's concerns about the Legal Practice Bill

**Photograph:** Bush Radio ©



Jeff Radebe, South Africa's current Minister of Justice and Constitutional Development

In 1999, a new Minister of Justice, Penuell Maduna, revived government's attempts to transform the legal justice system. Invitations to provide input into proposed legislation went out to stakeholders, including new players in the advice office and paralegal sector, the NCBPA and the National Paralegal Institute (NPI), refer further below. The result was the draft *Legal Practice Bill* in 2000, seeking to transform and regulate the whole of the legal justice system in one statute. The Bill included recognition of paralegals and a call for legal practitioners and paralegals to be regulated. Recommendations were made by government's task team that paralegals be trained and supervised by qualified legal practitioners.<sup>11</sup> However, consensus on a number of issues proved elusive, and divisions within the legal profession and the task team took the draft legislation in different directions. As a result, the Bill went into a semi-dormant phase for several years, attempting to make the occasional appearance but failing to translate itself into law.

In 2006, Minister of Justice and Constitutional Development Brigitte Mabandla, proposed the *Draft Legal Services Charter* – another attempt to transform the legal profession and the legal services sector. The Charter included provisions for minimum qualifications to be set for paralegals in an effort to standardise and regulate this sector. The Department of Justice and Constitutional Development (DOJ&CD) took the Charter into a series of provincial consultative fora and set up a steering committee consisting of representatives from legal professional associations and civil society organisations (CSOs) working in the legal services sector – among them, as will be seen, the NPI. The Charter subsequently went through three drafts before it too failed to translate into any significant policies or changes to the legal justice system.

In 2009, now with Minister Jeff Hadebe at the helm, the Ministry of Justice and Constitutional Development published a new draft *Legal Practice Bill*. As at mid-2012, the draft Bill was with Parliament's Portfolio Committee on Justice and Constitutional Development. The Committee has called for written submissions and will conduct public hearings on the Bill. However, in line with advocacy efforts by NADCAO, paralegals and CAOs to have a separate statute for the advice office sector, as discussed later in this report, the current version of the *Legal Practice Bill* does not deal with paralegals and CAOs.

<sup>11</sup> Community Agency for Social Enquiry *op.cit.*

The NCBPA's goal was to organise and strengthen a sector fragmented and weakened by funding and capacity crises.

# The National Community Based Paralegal Association and the National Paralegal Institute

In 1996, an important new player emerged on the advice office sector scene. The NCBPA was formed as a network of nine provincial paralegal associations (representing regional CAO and paralegal practitioner structures). Its overarching goal was to organise and strengthen a sector fragmented and weakened by funding and capacity crises.

The NCBPA was born on the back of discussions between paralegals and other stakeholders who felt that a representative body was necessary to bring about transformation and development in the advice office sector. Recognition of paralegals as part of the legal profession was essential, it was argued, as it would enhance the financial and operational security of the sector.<sup>12</sup> The objectives of the NCBPA were to

- organise the sector and give it a collective voice to lobby government for recognition of the role played by paralegals
- raise funds for organisational sustainability; and
- standardise the sector by means of certified training of paralegals and the development of uniform standards and a code of conduct and ethics<sup>13</sup>

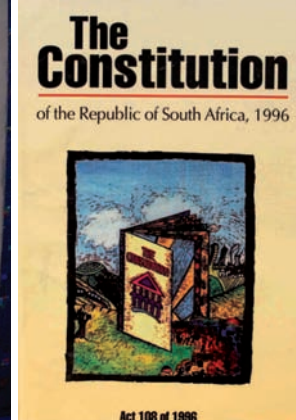
In 1997, through the intervention of the then Minister of Justice Dullah Omar, the Swedish International Development Agency (SIDA) and the International Committee of Jurists - Swedish Section (ICJ-S) agreed to provide financial support to the NCBPA and the paralegal movement.<sup>14</sup> Importantly, the ICJ-S understood this support to be temporary. In other words, it would cease when the paralegal movement was integrated into the “more formal system of judicial provision by the government”.<sup>15</sup>

<sup>12</sup> Berggren & Pigou *op.cit.*

<sup>13</sup> Community Agency for Social Enquiry *op.cit.*

<sup>14</sup> Berggren & Pigou *op.cit.*

<sup>15</sup> Khan, S & Sadek, S, *Swedish Support to Access to Justice in South Africa – a SIDA Evaluation*, SIDA: 2004, page 31.



By 2000, the NCBPA had five other donors on board, but despite gradual reduction in its funding, the ICJ-S remained the largest.

Consequently, funds from the ICJ-S were on a sliding scale, decreasing each year on the assumption that more and more advice offices would gradually access financial support from government, but also that the NCBPA would steadily move towards a position where it could cover its administrative costs through member fees and support from other donors.

The NCBPA received its first funds (more than ZAR3 million) from the ICJ-S in 1998. The funds were used to support over 120 CAO members of the NCBPA.

By 2000, the NCBPA had five other donors on board: the CS Mott Foundation, the Foundation for Human Rights (FHR), Interfund, Save the Children (Sweden) and the Transitional National Development Trust/National Development Agency (NDA).

Despite the gradual reduction in its funding, however, the ICJ-S remained the NCBPA's largest donor, just as the Association was the ICJ-S's largest grantee.<sup>16</sup> In the 2001 ICJ-S/SIDA South African partner budget, for example, the NCBPA received 57% of available funds, going down to a still substantial 48% in 2002.<sup>17</sup>

In 1999, the NPI was established as a project of the NCBPA. The Institute, which received funding from the FHR and the CS Mott Foundation, aimed to represent the interests of practising paralegals and to be a training provider. The NPI was to develop and deliver standardised and certified training for paralegals to enable them to work with the justice system. The training would be pitched at a higher level than that offered by other NGOs. It was envisaged that the NPI would offer a two-year paralegal diploma. The Institute also took on a lobbying function, providing input into the transformation of the legal justice system.

Drawing on the lobbying successes of long-standing human rights organisation the Black Sash, the NCBPA embarked on developing a database and case-logging system. For the Black Sash, the collection of data via a case management system had proved pivotal in efficient lobbying and campaigning for law reform and effective service delivery, and the NCBPA wanted to emulate this. Considerable time and resources went into developing a database and case-logging system to enable effective coordination and administration of CAOs and paralegals. By 2000, the system was up and running in the 120 advice offices supported by the ICJ-S.<sup>18</sup> Although paper-based since advice offices did not have computers, the NCBPA now had a powerful tool that it could use to lobby government for support and inclusion of paralegals and advice offices in the judicial system.

<sup>16</sup> Interview with Schalk Meyer, Director of the North West University Law Clinic, 20 July 2011.

<sup>17</sup> Khan & Sadek *op.cit.*

<sup>18</sup> Community Agency for Social Enquiry *op.cit.*





The database made it possible to document and show the type and sheer volume of work being done by CAOs. On a broader level, there were plans to link the NCBPA's database to databases developed by other institutions, including the Black Sash and the Community Law and Rural Development Centre (CLRDC).

In the second half of 1999 – with funding from the ICJ-S – the NCBPA and the Association of University Legal Aid Institutions (AULAI) launched a cluster model for incorporating paralegals into the legal aid system. Schalk Meyer, former Chairperson of AULAI and Programme Manager at the AULAI Trust, recalls that the idea behind the model was to widen the ICJ-S's support and strengthen other players in the sector by forming a network that could support advice offices and deepen access to justice.<sup>19</sup> The cluster initiative established formal relationships between university law clinics, paralegals and other legal NGOs and facilitated the provision of legal back-up services and training of paralegals in CAOs. Clusters operated on two levels: a regional/geographic level, managed by the NCBPA, and a sector/issue level, managed by AULAI.<sup>20</sup> A cluster coordinator was based at the NCBPA to coordinate paralegals. The cluster model was seen as a “real accomplishment”, the importance of which “cannot be overstated”.<sup>21</sup> Today, AULAI's Access to Justice clusters are still operating and providing valuable services to advice offices in five provinces.

As noted, one of the important objectives of the NCBPA was to gain recognition and support from government for paralegals. This was seen as a principal component in ensuring the sustainability of advice offices. Initially, during the early days of the NCBPA, paralegals favoured the development of separate legislation, but when the process leading up to the draft *Legal Practice Bill* in 2000 presented an opportunity to achieve this key objective, they changed their position towards supporting the incorporation of all legal practitioners into a single statute. The NCBPA and the NPI thus joined the legislative fray, providing spaces for collective representation and organising submissions by paralegals and CAOs. Among the legal profession, though, there was reluctance to include paralegals in the Bill. Concerns were raised with regard to regulation of the professional practice of paralegals. It was felt that paralegals were not adequately qualified and had no uniform practice standards. In the end, the draft Bill tried to strike a compromise by including recognition of paralegals but at the same time calling for legal practitioners and paralegals to be regulated.

Meanwhile, on an organisational level, cracks were starting to appear in the NCBPA. Its continued dependency on decreasing ICJ-S funding and a critical

<sup>19</sup> Interview with Schalk Meyer *op.cit.*

<sup>20</sup> Khan & Sadek *op.cit.*

<sup>21</sup> *Ibid.*, page 28.



*Lucille February, Project Coordinator at the Bontehuwel Advice Office and NADCAO Provincial Coordinator for the Western Cape*

**Photograph:** NADCAO ©

**The collapse of the NCBPA and a decision by the ICJ-S to withdraw from the South African advice office sector altogether from the end of 2006 threw the sector into crisis for a second time.**

external review by the ICJ-S and SIDA in 2004 signalled the beginning of the end for the Association and the NPI. While the review noted some successes, it raised a number of important concerns. One of these centred on the ICJ-S granting large sums of money to a fledgling organisation that did not have proper mechanisms and skills to manage and account for the funds. The NCBPA found it difficult to produce audited financial statements and the ICJ-S discovered cross-subsidisation of projects supported by other donors.

Several people interviewed for this case study who were involved in the sector at the time held the view that funds given to the NCBPA were mishandled and that its staff management was ineffective and sometimes non-existent. It was also alleged that funds were not reaching advice offices. In addition, although acknowledging that the NCBPA was successful in some respects, the Association was criticised for not having a clear strategy on how it was going to build and organise the advice office sector, or the requisite skills and information to do so. The NCBPA had become too hierarchical, it was argued, with power vested in a national office lacking knowledge of what was happening at provincial and local levels.

With the benefit of hindsight and in spite of the NCBPA's weaknesses, its work was crucial for advice offices and paralegals. During its time of operation, the Association did much to organise a fractured and embattled sector. Although the advocacy efforts of the NCBPA and the NPI were tripped up when the *Legal Practice Bill* from 2000 capsized, there is no doubt that their engagement and input ensured that paralegals and CAOs remained on government's agenda. Their work with regard to training qualifications and resource materials should also be applauded.

The collapse of the NCBPA and a decision by the ICJ-S to withdraw from the South African advice office sector altogether from the end of 2006 threw the sector into crisis for a second time. It again became fragmented and struggled for funding. Government was not forthcoming in fulfilling its commitment to take over the funding of advice offices and paralegals. In addition, CAOs often had to answer for the failings of the NCBPA. Provincial and local government, for example, began to approach CAOs with a degree of caution, believing that the collapse of the NCBPA was a reflection on advice offices and that they too were unable to handle their own affairs.<sup>22</sup> This had a damaging effect on the ability of CAOs to raise funds from local sources, further compounding their funding woes.

Many advice offices folded. Yet, others did not. As they had done for decades, CAOs and paralegals soldiered on and continued to provide essential legal and other advice services to poor and marginalised South Africans, surviving on donations from their communities and the goodwill of volunteers.

<sup>22</sup> Interview with Lucille February, Project Coordinator at the Bontehuwel Advice Office and NADCAO Provincial Coordinator for the Western Cape, 4 August 2011.

# IV. The formation of the National Alliance for the Development of Community Advice Offices

The establishment of the National Steering Committee of Community Based Paralegals and Advice Offices in South Africa

In 2005, the FHR initiated a roundtable discussion with other donors involved in the access to justice and advice office sector in an attempt to respond to the financial crisis. Aside from the FHR, the roundtable brought together a number of international donors – the CS Mott Foundation, ICJ-S, Netherlands Institute for Southern Africa (NiZA) and SIDA – as well as local funder, the NDA. Also party to this initial conversation was the Legal Aid



*Indwe Advice Office in the Eastern Cape*

**Photograph:** NADCAO ©

The National Steering Committee of Community Based Paralegals and Advice Offices in South Africa was the only forum where funders, service providers and the advice office sector sat around the same table to discuss sustainability, organisation and recognition of CAOs and paralegals.

Board. Although fighting its own internal battles, the NCBPA – as the national representative body of paralegals and advice offices – was also invited to provide context to the discussions.<sup>23</sup>

The roundtable was a pre-emptive move to stave off further shocks to the sector as a result of the ICJ-S's termination of its funding by 2006 and centred on how the advice office sector could be strengthened and sustained. Having pumped more than ZAR100 million into access to justice projects in South Africa over a 10-year period<sup>24</sup>, the ICJ-S's withdrawal would leave a large funding vacuum in an already vulnerable sector.

Juxtaposed with this funding crisis, developments requiring collective strategies and interventions by the advice office sector were unfolding in the legislative arena. The beleaguered *Legal Practice Bill* – with its recognition of paralegals – was scheduled to be tabled before Parliament in 2005/2006, and the National Qualifications Framework was about to be accepted by the South African Qualifications Authority, putting in place minimum qualifications and standards for the training and professional legal practice of paralegals.

Recognising that something had to be done to strengthen the sector and enable it to respond effectively to funding crisis as well as legislative developments, the FHR, the CS Mott Foundation and the ICJ-S initiated a multi-stakeholder discussion with major NGO players, including the Black Sash, Social Change Assistance Trust (SCAT), Karoo Centre for Human Rights (KCHR), CLRDC and the NCBPA. This group subsequently became the National Steering Committee of Community Based Paralegals and Advice Offices in South Africa (NSC), the only forum where funders, service providers and the advice office sector sat around the same table to discuss how to bring about sustainability, organisation and recognition of CAOs and paralegals.<sup>25</sup>

<sup>23</sup> NADCAO, *Background Information on the National Alliance for the Development of Community Advice Offices*, undated.

<sup>24</sup> Khan & Sadek *op.cit.*

<sup>25</sup> NADCAO, *Background Information op.cit.*



Between 2005 and 2007, the NSC gradually evolved into NADCAO. Other NGOs were invited to join, but as the transition unfolded, relationships with the NCBPA soured.

## The transition from the National Steering Committee to the National Alliance for the Development of Community Advice Offices

Between 2005 and 2007, the NSC gradually evolved into NADCAO. Other NGOs, such as AULAI, Ithembalabantu and the Upper Karoo Advice and Development Agency (UKADA) were invited to join. Predictably, the ICJ-S withdrew as it wrapped up its involvement in the sector, and as the transition unfolded, relationships with the NCBPA soured.

The establishment of the NSC coincided with the internal crises of the NCBPA and gave rise to perceptions within the Association that the NSC was intended to replace the NCBPA, and that the donors on the NSC would use their influence to encourage less funding to the NCBPA.

The NSC made great efforts to convince the NCBPA that the NSC was concerned with the sustainability and development of the sector, and that it did not seek to represent paralegals and advice offices but in fact needed the NCBPA on board to ensure that the voices of paralegals and CAOs took centre stage. At the same time, as an initiative intended to engage with donors to strengthen the sector's financial sustainability, the NSC had to carefully manage its association with the NCBPA, which – as seen earlier – was unable to account properly for donor funds. However, as the NCBPA's crises deepened, culminating in the closure of its provincial offices and subsequently its national office, the NCBPA representatives on the NSC no longer had a constituency, and the NSC saw no other option but to ask them to leave.

In sum, the NSC came to consist of AULAI, Black Sash, CLRDC, CS Mott Foundation, FHR, Ithembalabantu, KCHR, SCAT and UKADA.

Alliances become important organisational formations in an environment where funding is receding and resources are scarce, as they afford individual organisations the opportunity to engage in collective, strategic and efficient use of resources.

During the transition period towards NADCAO, the NSC first became the National Coordinating Structure for Paralegals and Advice Offices.<sup>26</sup> Its mission was to be a national network of advice offices and community-based paralegals that aimed to

- facilitate and expand access to social justice by the poor in South Africa through advocacy and informed by a sound knowledge repository
- support and develop the sector; and
- mobilise resources.

As the NSC gradually moved towards greater formalisation, it had to clarify a number of issues.

The exit of the NCBPA gave rise to discussions about the need for another sector-representative structure and whether this was to fall within the mandate of the NSC. The Committee resolved that its focus should remain the sustainability and development of the sector, and that the NSC should not seek to represent it.

The Committee also had to grapple with what form of organisation would be optimal – an alliance, a network or an association.

A strategic alliance can be defined as a voluntary, formal arrangement between two or more organisations with the goal of pooling and using resources to achieve a common set of objectives, while maintaining the independence of members. Alliances become important organisational formations in an environment where funding is receding and resources are scarce, as they afford individual organisations the opportunity to engage in collective, strategic and efficient use of resources. In order for this to work, there must be a level of synergy between participating organisations and they must be able to work together.

An alliance was not a common organisational form in the South African NGO sector, however. Most often, NGOs tended to form partnerships, collaborations and associations and were more inclined to refer to groupings of organisations as networks. The NSC's decision to go with an alliance was therefore innovative and unique, but clearly reflected that the Committee wanted to establish a new organisation that allowed members autonomy while joining forces in pursuit of a shared goal. Synergy between members was an important consideration and was reflected in the composition of the five founding NADCAO members – AULAI, Black Sash, CLRDC, FHR and SCAT. If used strategically and efficiently, the skills, resources and networks that these organisations had could go a long way in facilitating the development of the advice office sector.

<sup>26</sup> NSC, *Brief of the Steering Committee Meeting held 4 and 5 May 2006*.



*Joe Japhta, NADCAO  
Programme Coordinator*

*Photograph: NADCAO ©*

Lastly, a decision had to be made about the level of formality of the alliance. The NSC decided against registering a formal legal entity. It wanted energies to focus on maintaining the momentum that had been generated and not eat into scarce resources that would be better deployed pursuing the objectives of the alliance. Aware of the hosting model, the NSC members therefore looked to each other for an organisation that could absorb the administration of the alliance and offer stability, sound accounting practices and organisational policy frameworks.

## The National Alliance for the Development of Community Advice Offices – set-up, mission and objectives

In 2007, the NSC launched itself as the National Alliance for the Development of Community Advice Offices – NADCAO.

NADCAO's five founding members, along with Ithembalabantu and the KCHR, became its Steering Committee. An Executive Committee consisting of AULAI, Black Sash and the CLRDC was established, as was a Secretariat.

The Secretariat had three staff members – a National Coordinator, a Programme Coordinator and an Administrator – and accounted to the Executive Committee.

The SCAT representative on the Steering Committee, Greg Erasmus, became the National Coordinator, and Joe Japhta, who formerly ran the Access to Justice Programme for the FHR, became Programme Coordinator. Two consultants were contracted to provide start-up support to the Secretariat. The roles of the consultants were to hold processes together, help neutralise tensions, maintain a clear focus during the debates within the Alliance, and handle some technical tasks, such as proposal development for donors.

In comparison to the mandate of the NCBPA, NADCAO was neither a representative structure of advice offices and community-based paralegals, nor would it raise or channel funds to individual CAOs.

In some cases, members of the Alliance also took on specific tasks. But where they lacked the resources and skills, they formed external alliances, as discussed in more detail later.

Initially, the FHR hosted NADCAO's Secretariat. After a few months, the Secretariat moved to the Black Sash's national office in Cape Town. The Black Sash had a history of hosting organisations like the Open Democracy Advice Centre and the Centre for Public Participation – both of which went on to become successful organisations in their own right – and it therefore seemed the most appropriate host for NADCAO. Hence the Black Sash hosted the Secretariat from 2008 to 2011. The hosting arrangement meant that the Black Sash entered into agreements and contracts on NADCAO's behalf, and as such, the high degree of donor confidence and respect enjoyed by the Black Sash also boosted NADCAO's fundraising profile.

NADCAO's overarching vision is social justice for the poor in South Africa. Its mission statement reads:

*NADCAO is a national alliance for the development of community advice offices and community-based paralegals that aims to facilitate and expand access to social justice by the poor in South Africa through voice and knowledge sharing, support and development, and resource mobilisation.<sup>27</sup>*

As an alliance, NADCAO would implement its mission by facilitating efficient and effective use of the resources, skills and networks of Alliance members for the development of the sector. This involved strengthening the capacity of CAOs and paralegals, organising the sector and ultimately ensuring its sustainability. In comparison to the mandate of the NCBPA, NADCAO was neither a representative structure of advice offices and community-based paralegals, nor would it raise or channel funds to individual CAOs. NADCAO would work on a sector level and hence defined its five-year strategic objectives as follows:

- facilitate the provision of relevant support, development services and resources to the sector
- mobilise resources for the sector; and
- be the voice of the sector, supported by an authoritative national knowledge source.

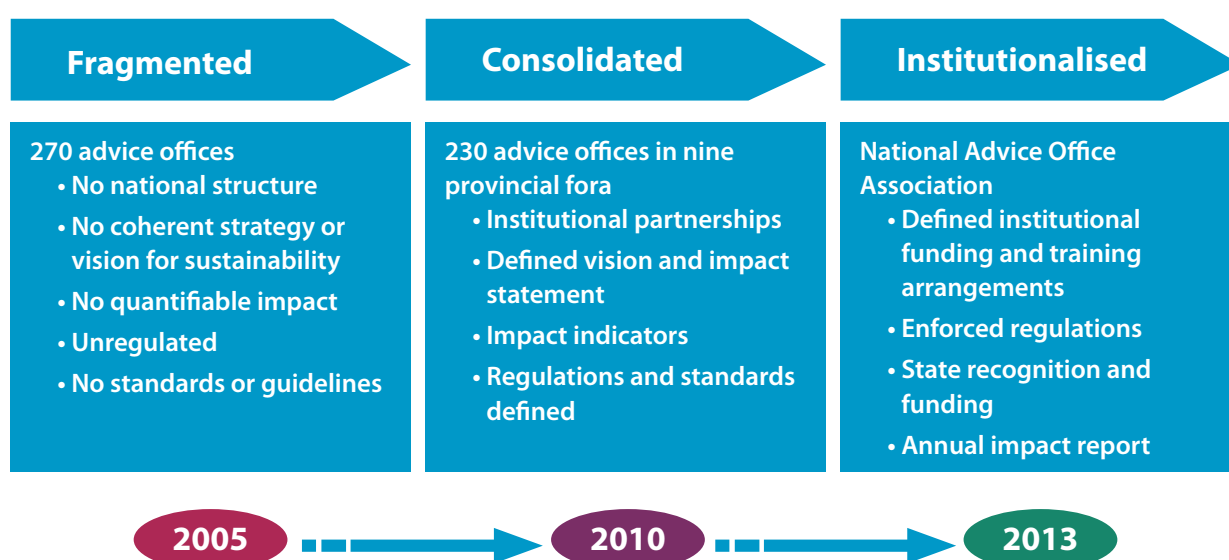
NADCAO developed a new sustainability model – the Sector Development Model - setting timeframes and milestones to be achieved in the development of the advice office sector, from fragmented to consolidated and lastly institutionalised.<sup>28</sup>

<sup>27</sup> NADCAO, *Background Information op.cit.*

<sup>28</sup> NADCAO, *Multi-Year Proposal to Atlantic Philanthropies for 2010-2013*, 2010.



# Sector Development Model



*Nomboniso Maqubela, NADCAO  
Interim National Coordinator*

*Photograph: NADCAO ©*

As can be gauged from the Sector Development Model, NADCAO was intended to have a lifespan of six years (2007-2013) in which to reach its goal. It was envisaged that thereafter CAOs would be in a position to “rise up and take ownership of the space”<sup>29</sup>, do their own lobbying and advocacy, secure their own funding and establish their own national structure – a National Advice Office Association.<sup>30</sup> In sum, NADCAO was seen as an interim, sector-level initiative, playing the role of catalyst for change.

<sup>29</sup> Interview with Nomboniso Maqubela, Interim NADCAO National Coordinator, 3 August 2011.

<sup>30</sup> Interview with Greg Erasmus, former NADCAO National Coordinator, 19 October 2009.

# V. Alliance-building

The alliance model was not an easy model to sell to NGOs, as it required them to give resources without expecting any direct benefits for their own organisation.

## The internal alliance

Although most of NADCAO's members are NGOs, it is evident that the formation of the Alliance was the end result of an – at least initially – donor-driven process, with the FHR and the CS Mott Foundation at the helm. This begs two questions. Would the process towards the formation of NADCAO have been set in motion in the first place had it not been for these two donors? Secondly, would it have succeeded?

It is doubtful that organisations working with advice offices would have come together on their own. South African NGOs, especially in the advocacy, human rights and access to justice fields, typically found themselves in a highly competitive environment due to receding funds, and many were locked in a perpetual cycle of sourcing funds, implementing funded projects and reporting to donors. In short, it was largely every organisation for itself. Hence, the fact that the FHR and the CS Mott Foundation took it upon themselves to instigate NADCAO may very well have saved the advice office sector from irretrievable collapse.

However, inferring the success of the formation process from the presence of donors is both one-dimensional and debatable. A number of complex dynamics were at play, between donor and NGO members, and among these NGOs themselves.

Once organisations were brought on board – despite many tensions and conflicts of interest – they were held together by a sense of urgency and a strong desire to facilitate social justice for the poor through efficient and sustainable CAOs.

As noted, the alliance approach was unique in a South African context as it was not a common organisational form. Also, in an environment with many organisations doing similar kinds of work and with intense competition for funds and resources, the alliance model was effectively a new, innovative way of looking at sustainability. However, it was not an easy model to sell to NGOs as it required them to pool their skills, resources and networks in an attempt to rescue an entire sector – in other words, give resources without expecting any direct benefits for their own organisation. To some of the organisations initially

An alliance requires equality between members, but when the members are donors and grantees, it is a difficult principle to maintain as power tends to be skewed in favour of the donors.

invited to join the NADCAO process, this proved an impossible leap, and the NGOs that remained struggled to balance their individual organisational needs with those of the sector. According to some interviewees, the fact that donors were part of the process may have led NGOs to feel that if they participated, donors would look more favourably upon them when granting funds.

The above points to a key challenge for NADCAO. An alliance requires equality between members, but when the members are donors and grantees<sup>31</sup>, it is a difficult principle to maintain as power tends to be skewed in favour of the donors. In the case of NADCAO, this tendency may equally have had effects on the balance of power between its NGO members. Some NGOs were larger than others, with extensive networks and considerable human and financial resources. NGO members also differed in terms of the nature of the work they were doing, with some providing direct services and others providing support and referrals. Each organisation had its own configuration and set of interests. Sometimes these differences caused tensions and conflict, but with donors around the table some interviewees suggested that NGOs may have felt reluctant to openly bring up issues of power dynamics among themselves for fear of disapproval by the donors.

The views of the donors were that the NGOs on the NSC laboured tirelessly to piece together NADCAO and that, had it not been for their level of commitment, NADCAO would not have got off the ground. Similarly, donors felt that while variances between these NGOs may have caused friction at times, they also brought with them different voices, perspectives and strategies in taking the vision of NADCAO forwards.

For the donors, being part of NADCAO provided them with a space to learn more about the sector they were funding. The FHR, for example, developed a call for proposals for CAOs, based to a large extent on knowledge and information it gained from NADCAO Steering Committee meetings. These meetings gave the FHR a better sense of what was required in the sector and where funds should go.

In sum, the process of building the internal alliance yielded some valuable lessons. This learning is discussed in more detail later in this report.

<sup>31</sup> All NADCAO's members (including the FHR) were CS Mott Foundation grantees, and most of NADCAO's NGO members also received grants from the FHR.

As a starting point in forging an alliance with the community advice office sector, NADCAO had to prove to CAOs and paralegals that it had something valuable to offer.

## Alliances with the community advice office sector and civil society partners

Forging an alliance with the community advice office sector, needless to say, was critical to NADCAO fulfilling its mandate. As a starting point, it had to prove to CAOs and paralegals across the country that it had something valuable to offer.

Initially, NADCAO's strategy was to work with 230 CAOs identified by its member and partner organisations. The NADCAO Secretariat went around to all these advice offices explaining what NADCAO was about and what it was trying to do. From these visits and from scoping research it became clear that each advice office was operating at different levels of efficiency and capacity. With limitations on NADCAO's own capacity, resources and time it would simply not be feasible or effective for the Alliance to work with each office individually. As stipulated in its objectives, NADCAO also faced the challenge of how to synchronise the individual needs of CAOs into a collective voice that could articulate shared needs.<sup>32</sup>

As a consequence, NADCAO decided to change its strategy towards setting up provincial fora in each of the nine provinces. It made sense to adopt a provincial formula as government service delivery was delineated along provincial lines, with provincial government departments, programmes and budgets, and as CAOs occupied a central position in service provision.<sup>33</sup>

When NADCAO entered the provinces, however, it was met with a number of expectations. Generally, advice offices depended on NGOs to unlock resources for them, so many CAOs believed that NADCAO was an organisation that would raise funds on their behalf and channel these down to advice offices. Remembering the NCBPA experience, there were also expectations that NADCAO would be a representative body of advice offices. The fact that NADCAO was none of the above but an alliance seeking to help build the capacity of CAOs to fend for themselves – raising their own resources, creating their own representative structures, advocating their own needs – was a difficult proposition for them to grasp.

<sup>32</sup> NADCAO, *Status Report on Provincial Forums*, 2011.

<sup>33</sup> *Ibid.*





*Sabelo Mfeka, paralegal at the Ukhahlamba Paralegal Advice Office, NADCAO Provincial Coordinator in KwaZulu-Natal and Chairperson of its provincial forum*

**Photograph:** NADCAO ©

In establishing the provincial fora, NADCAO sought the support of its members and other organisations that already worked with advice offices in the various provinces. In each province NADCAO had to juggle different scenarios.

In KwaZulu-Natal, for example, the Alliance encountered a community advice office sector that had managed to remain fairly well organised despite the NCBPA's collapse, largely owing to the work of three support organisations: the Centre for Criminal Justice (CCJ), CLRDC and Ithembalabantu.

As a new player, and with a broader focus on community resource centres in the province (not all necessarily providing paralegal services), Ithembalabantu's role in supporting CAOs was limited in comparison to the two other organisations.

The CCJ and the CLRDC both had a specific focus on CAOs and played crucial support roles. They functioned as funding conduits, raising and disbursing funds to advice offices, and paid the salaries of paralegals and heads of CAOs. This placed a huge financial and administrative burden on the CCJ and the CLRDC, and both organisations understood NADCAO's vision of a stronger and more self-reliant advice office sector. Consequently, they fully supported NADCAO in forming a provincial forum in KwaZulu-Natal.

However, this was easier said than done. An initial challenge for NADCAO was to convince CAOs of the logic behind the Alliance and this proved harder and more time-consuming than in any of the other provinces.

*At first, we were not sure about NADCAO. Greg [Erasmus, the then NADCAO National Coordinator] and Joe [Japhta, NADCAO Programme Coordinator] arranged a meeting with advice offices in KwaZulu-Natal. KwaZulu-Natal was unique because advice offices fall under the CCJ and the CLRDC. We were told about the advantages and disadvantages of affiliating to NADCAO. It was clear that the objective was for advice offices to operate independently. We could not rely on two organisations for support because organisations come and go and one never knows when the funds will dry up. After long deliberations, we saw NADCAO as a means to freedom, to do our own thing and to grow as paralegals and advice offices. We realised that we had a very strong reliance on the CCJ and the CLRDC. To operate independently means that we will be able to grow and interact with other stakeholders.<sup>34</sup>*

While the forum was being set up, the CCJ and the CLRDC formed a partnership, sharing the task of assisting CAOs to become independent legal entities. They first undertook an audit of all the advice offices they worked with and proceeded to facilitate a more evenly geographic spread – so, in an area where there were two CAOs, one was relocated to another needy area.

<sup>34</sup> Interview with Sabelo Mfeka, paralegal at the Ukhahlamba Paralegal Advice Office (who later became NADCAO's Provincial Coordinator in KwaZulu-Natal and Chairperson of its provincial forum), 1 August 2011.



Staff at the Berlin Advice Office in the Eastern Cape

Photograph: NADCAO ©

Left with about 50 CAOs, the CLRDC took the lead in helping these offices register as non-profit organisations (NPOs) and set up governance structures, and offered them governance training. The CCJ assumed responsibility for providing university-accredited paralegal training.

Setting up a provincial forum in the Western Cape was also a challenge but for different reasons.

In 2006, heads of CAOs in the province established the Western Cape Advice Office Association to represent them as managers of advice offices and employers of paralegals. Two years later, a separate structure was established – the Western Cape Paralegal Association – representing CAO paralegal employees (the only provincial association of individual paralegals).

With NADCAO's proposal of a provincial forum, tensions arose between the two Associations as to which of them should represent the sector. The Alliance argued for a merger of the two to form a single structure, but the Advice Office Association saw itself as the primary representative of CAOs and subsequently withdrew its support for NADCAO. The Paralegal Association, on the other hand, committed itself wholeheartedly to the provincial forum process. This catapulted NADCAO into the midst of an ongoing and difficult balancing act: how to partner the Paralegal Association in the Western Cape provincial forum, while maintaining NADCAO's collective focus on CAOs and the sector.<sup>35</sup>

Notwithstanding the fact that large NADCAO member organisations like the Black Sash and SCAT are based in the Western Cape, the Alliance was not able to draw on member support to the same extent as in other provinces, further compounding its challenges in setting up a provincial forum. The Black Sash was already providing substantial support to NADCAO – notably by hosting the Alliance – and felt that other members from the province should come to the table. However, this did not happen initially, as some member organisations simply had fewer resources to give. The KCHR eventually came on board and is currently providing support to the provincial forum.

In the Eastern Cape, by contrast, NADCAO found an early partner in the Rhodes University Legal Aid Clinic (RULAC)<sup>36</sup>. The Clinic was providing legal back-up services, training (including fundraising training) and administrative support to the majority of CAOs in the province (45 out of 63<sup>37</sup>). It also acted as an intermediary grantmaker, re-granting funds from the CS Mott Foundation to advice offices, and it assisted CAOs to register as NPOs and set up governance structures.

When NADCAO approached RULAC to help create a provincial forum, the Clinic not only agreed to support the process, but raised funds for it from the German Development Service and the French Embassy. From RULAC's point of view, a NADCAO provincial forum would be beneficial to its own

<sup>35</sup> NADCAO, *Status Report op.cit.*

<sup>36</sup> A partner of NADCAO member AULAI.

<sup>37</sup> NADCAO, *Status Report op.cit.*

An early cross-cutting priority for NADCAO became strong and effective leadership as a prerequisite for well-functioning provincial fora.

developmental and facilitative role in working towards a more organised, vibrant and self-sustained advice office sector in the Eastern Cape.<sup>38</sup>

However, in spite of RULAC's full support to the NADCAO process, and although the Alliance quickly realised the importance of good leadership in all the provinces (see below), the establishment and consolidation of the Eastern Cape provincial forum proved to be a particular challenge for NADCAO in this regard. Taking stock in late 2011, NADCAO summed up the Eastern Cape situation as one where the resignation of key forum people, not least its Chairperson, appeared to have paralysed the forum from moving forward.<sup>39</sup>

All in all, as the above examples show, the NADCAO Secretariat's efforts to build alliances with the advice office sector through provincial fora yielded different experiences in different provinces. The Alliance had to adapt and navigate its way through a number of challenges to form these important strategic pillars and make them work.

An early cross-cutting priority for NADCAO, however, became strong and effective leadership as a prerequisite for well-functioning provincial fora. NADCAO's first National Coordinator, Greg Erasmus, consequently focused on building leaders through a mentorship programme. This resulted in the creation of provincial coordinators, drawn from leaders of successful CAOs and seconded by NADCAO to the executive committee of each provincial fora to help ensure faster turn-around time on critical tasks and activities.

## Alliances with government

Since the early 1990s, as detailed at the beginning of this report, the ANC and subsequent ANC-led governments have acknowledged the valuable contribution of paralegals and CAOs in ensuring access to justice. Over the years, as government has attempted to transform the legal justice system, it has pledged commitment to support, recognise and include CAOs and paralegals in the access to justice framework. However, despite the efforts of the NCBPA and the NPI in the late 1990s and early 2000s, the sought-after recognition and support did not materialise. The collapse of the NCBPA left the advice office sector in disarray, with government generally holding the view that the sector was disorganised and incompetent.

When NADCAO arrived on the scene, with its broad mandate to strengthen and develop the advice office sector, it was therefore imperative to rebuild relations and form alliances with government.

<sup>38</sup> Interview with Terwin de Vos, RULAC Community Outreach Coordinator, 17 August 2011.

<sup>39</sup> NADCAO, *Status Report op.cit.*



*LASA National Operations Executive Brain Nair (left) and former NADCAO National Coordinator Greg Erasmus*

**Photograph:** NADCAO ©

NADCAO managed to strategically place itself as the voice of CAOs and paralegals, and the Department of Justice and Constitutional Development gradually came to see the Alliance as its core partner on issues relating to the advice office sector.

NADCAO's initial inroad into the DOJ&CD was facilitated by the FHR. The Foundation had developed a close relationship with the Department as the implementer of the DOJ&CD's Access to Justice Programme, funded by the European Union.

As the Alliance steadily earned the trust of the Department, it managed to strategically place itself as the voice of CAOs and paralegals, and the DOJ&CD gradually came to see NADCAO as its core partner on issues relating to the advice office sector.

*The Department's engagement with NADCAO was important because it brought to the Department's attention a side to the access to justice sector that had previously remained marginalised.*<sup>40</sup>

NADCAO also prompted the Department to think more strategically about whether the interests of paralegals and CAOs would be best served by their inclusion in the same piece of legislation as the rest of the legal profession; in other words, whether they should or should not feature in the *Legal Practice Bill*.

Following the collapse of the NCBPA, the DOJ&CD had only consulted with the formal legal profession on the Bill. However, NADCAO facilitated the participation of CAOs and other civil society stakeholders in national consultations, and the DOJ&CD came to acknowledge

*that community advice offices were the only ones providing services to the indigent, that they were filling a gap that government could not fill and that they had greater reach than government's services through Legal Aid South Africa [LASA, formerly the Legal Aid Board].*<sup>41</sup>

The Department proceeded to request that NADCAO develop a policy document on paralegals and CAOs, including recognition of the Alliance as government's core partner in the advice office sector.<sup>42</sup>

Parallel to its engagement with DOJ&CD, NADCAO also approached LASA. LASA had been providing legal advice services to indigent people, but only on criminal matters. However, as the Constitution obliges state institutions to offer protection of socio-economic rights, LASA started lobbying government to fund its legal assistance on civil legal aid matters and was able to grow its intake of civil cases. It is currently asking government for additional funds to be able to further increase its civil case load, from 7% to between 10 and 15%.<sup>43</sup>

<sup>40</sup> Interview with Kalay Pillay, Acting Chief Litigation Officer at the DOJ&CD, 8 August 2011.

<sup>41</sup> *Ibid.*

<sup>42</sup> NADCAO, *Proposal for Stakeholder Recognition and Engagement*, submitted to the DOJ&CD, 2011.

<sup>43</sup> Interview with Brian Nair, LASA National Operations Executive, 28 July 2011.



NADCAO was keen to build relationships with LASA to unlock additional resources for CAOs, notably legal back-up services.

While LASA has paralegals based in its 128 Justice Centres and Satellite Offices around the country and feels that its “footprint is wide enough to cover all criminal courts”<sup>44</sup>, it does not have a far enough reach with regard to civil matters. LASA had attempted to form partnerships with CAOs by working with the NCBPA, the CLRDC and SCAT, but while cooperation with the latter two continue today, the collapse of the NCBPA also meant a collapse of LASA’s efforts to strike a partnership with the broader sector.

With the establishment of NADCAO, the opportunity for a partnership re-emerged. Marcella Naidoo, the National Director of the Black Sash and a member of NADCAO’s Steering and Executive Committees, was also a LASA Board Member and thus facilitated initial contact between NADCAO and LASA. The Alliance was keen to build relationships with LASA to unlock additional resources for CAOs, notably legal back-up services.

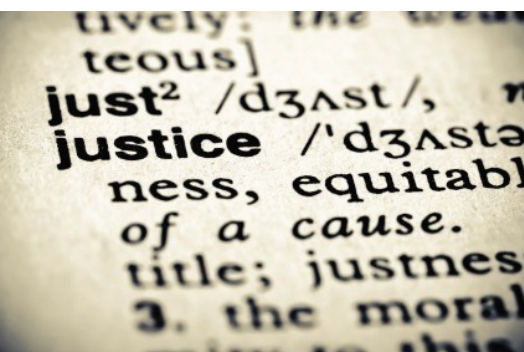
LASA and NADCAO proceeded to develop a formal cooperation agreement, stipulating that where there is a NADCAO-supported CAO and a Justice Centre in close proximity, LASA will visit the CAO once or twice a month to provide legal back-up services, and that CAOs will refer cases to LASA.<sup>45</sup> LASA has instructed its regional offices to work with NADCAO’s provincial fora in each of the nine provinces.

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<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.* and interview with Greg Erasmus, 8 April 2010.

# VI. Successes and lessons learnt



It needs to be remembered that when NADCAO surfaced, the South African advice office sector was weak and fragmented. In this context, along with the Alliance's still relatively short lifetime, NADCAO has several successes under its belt.

In assessing NADCAO's successes, it needs to be remembered that when NADCAO surfaced, the South African advice office sector was weak and fragmented, steeped in funding and resource crises, and struggling for recognition and respect, not least from government.

In this context, along with the Alliance's still relatively short lifetime, NADCAO has several successes under its belt.

The fact that it was established at all would be a first one, considering what it proposed to be and do – a national alliance of donors and NGOs putting their own narrow interests and differences aside and pooling their resources to advance the sustainability of an entire sector.

To propel its objectives forward, and in line with its *modus operandi*, NADCAO has drawn extensively on the resources of member organisations and partners, for example through its hosting arrangement and in the formation of provincial fora, as illustrated above.

While NADCAO has still not reached the institutionalisation phase of its Sector Development Model, it has managed to move the sector into a consolidation phase.

The Alliance has successfully established nine provincial fora, all in alignment with NADCAO's vision and strategy, and strengthened provincial-level leadership via provincial coordinators. Through the provincial fora, it reaches and works with 230 CAOs across the country, and has rolled out a powerful advocacy tool (the Central Case Management System – CCMS, refer further below) to most of these.

Vital achievements have been the rebuilding of the advice office sector's relations and cooperation with government – in particular the DOJ&CD and LASA – and facilitation of the sector's reengagement in the legislative process.

NADCAO has positioned itself as a central advice office sector partner, not only for the DOJ&CD, LASA and other NGOs, but also for a number of donors. A new initiative – a development fund for CAOs – is under discussion between The Atlantic Philanthropies, CS Mott Foundation, FHR, Hivos, NDA, National Lottery and SCAT. NADCAO's Secretariat has been asked to be part of these discussions to represent the voice of CAOs and provide input on sustainability issues.



None of NADCAO's successes have been straightforward. Important lessons have emerged along the way, not least in relation to the inner workings of the Alliance.

However, none of NADCAO's successes have been straightforward, and important lessons have emerged along the way. Some of these lessons have been alluded to or covered in previous sections. What follows below is a closer look at critical learning for NADCAO, particularly in relation to the inner workings of the Alliance.

## Synergy, governance and structure

When NADCAO was launched, all member eyes were on the urgency of addressing the woes of the advice office sector and getting to work on achieving NADCAO's vision. Synergy between Alliance members had been a key consideration in the formation of NADCAO, so the group was simply expected to begin working together organically and move forward in good faith. However, as discussed, power dynamics between its donor and NGO members, as well as among the NGO members, soon surfaced and raised early challenges for NADCAO. A clear lesson from this was that, while a degree of altruism on the part of NADCAO's members was a prerequisite for its success, the Alliance had not taken the necessary time to implement a proactive process to facilitate and deepen synergy within the group.

On the formation of the Alliance, as explained, the decision was made not to register it as a legal entity. NADCAO was meant to have a limited lifespan, and members did not want to use resources or spend time on formalisation.

However, as NADCAO moved ahead trying to implement its mandate, it became evident that achieving its objectives by 2013 was not feasible. There was a lot of work to be done in the provinces – each of them presented a different scenario in terms of the state of the advice office sector, and of member and partner organisations' capacity to support NADCAO processes, thus throwing up a broad range of challenges for Alliance.

At the same time, NADCAO's hosting arrangement with the Black Sash had imparted some valuable lessons. While successful in the short to medium term as it put Black Sash assets (systems, capacity and its standing in the sector and with donors) at the disposal of the Alliance, the arrangement began to sit uneasily with the fact that NADCAO was increasingly coming into its own. Several of the people interviewed for this case study spoke of emerging perceptions that NADCAO was a project of the Black Sash, and that NADCAO had been absorbed by its host.

NADCAO's governance and hosting blueprint did not give clarity on how to separate the Alliance's management and accountability lines from those of the host organisation. NADCAO found itself in a situation where it had to

Internal relations suffered due to ambiguity in the roles and division of labour between NADCAO's Steering Committee and its Secretariat. It was not clear who was leading the Alliance, and there often seemed to be a disjuncture between the management and implementation sides of NADCAO.

comply with the policies of the Black Sash, and decision-making became more hierarchical than consensual with the host organisation's director also serving on NADCAO's Steering and Executive Committees. It became evident that too much oversight and power lay with one individual but that it was difficult for NADCAO to hold the host accountable.<sup>46</sup> In combination with poor lines of communications, unequal power relations within the Alliance and the fact that mediation and conflict resolution mechanisms were not properly spelt out, this resulted in a deterioration of relationships between members, and between members and the NADCAO Secretariat.

Staying with relations between Alliance members and the Secretariat, these also suffered due to ambiguity with regard to the roles and division of labour between the Steering Committee and the Secretariat. It was not clear who was leading the Alliance, and who was responsible for facilitating and building the relationship between Alliance members and the Secretariat. Often, there seemed to be a disjuncture between the management and implementation sides of NADCAO. As tensions grew it became increasingly difficult to balance the interest of Alliance members with those of the sector – there was a tendency to dismiss each other's suggestions, ideas and interventions as self-serving. This led to situations where, if there was a problem or the Secretariat felt that the brakes were applied too hard by the Steering Committee, the Secretariat chose to go its own way. In some cases this proved advantageous, in others it caused further damage to internal relationships.

As a consequence of this learning, the Steering Committee and the Secretariat agreed to go the route of formalisation and convert the Alliance into an independent entity. NADCAO began the process of registration at the end of 2010. It formed an Interim Board consisting of three members from the Steering Committee: AULAI, CLRDC and the Black Sash.

By 2012, NADCAO was registered as a Section 21 Company. It has been proposed that the new governance structure include a NADCAO Council made up of all NADCAO's Steering Committee members.<sup>47</sup> The Council would be responsible for appointing the Board of Directors and holding it accountable. It would also serve to reinforce NADCAO's foundation as an alliance, maintain its strong links to the sector, and preserve its institutional memory. The Board of Directors will consist of 10 members, combining representation and professional skills, and will have a comprehensive portfolio of governance, leadership and accountability duties, including appointment and performance assessment of the Executive Director.

<sup>46</sup> Case study feedback workshop, 26 January 2012.

<sup>47</sup> NADCAO, *NADCAO New Structure – Considerations and Recommendations*, 2010.





*NADCAO paralegal training*

**Photograph:** NADCAO ©

## Advocacy and lobbying

As set out in its objectives, NADCAO wanted sound knowledge to underpin its advocacy and lobbying. It thus decided to revive the CCMS, dating back to the days of the NCBPA, and roll it out electronically to all CAOs to make the capturing and analysis of data more efficient.

Alliance member Black Sash – a principal best practice model in this regard – was in the process of revamping its own CCMS. It offered the system to NADCAO, as well as assistance in terms of simplifying and adjusting it to the needs of CAOs, and in gathering and analysing data. The goal was a tailor-made, independent NADCAO version of the CCMS.

At some point during this process, however, there appeared to have been a breakdown in communications within the Alliance. The Black Sash went ahead with the overhaul of its own CCMS, but its support to NADCAO's process was not forthcoming. This put the Alliance in a tight spot, as it was common knowledge that the Black Sash was the only organisation with the capacity and experience to process and analyse CCMS data for advocacy. The NADCAO Secretariat resolved to bring in an external consultant to complete its CCMS and provide training to CAOs.

In 2009, NADCAO introduced the CCMS in 50 CAOs, followed by another 87 in 2010. The roll-out was supplemented with on-site training and technical assistance. Ongoing support, maintenance and management of the CCMS, however, proved expensive. In some CAOs, the first hurdle was the fact that they did not have the infrastructure to host an electronic CCMS. To overcome this, NADCAO's Secretariat approached LASA and other organisations to assist.

Importantly, however, it is as yet not clear how data from CAOs will be gathered and who will analyse it.

In sum, NADCAO's efforts to put in place and use the CCMS, although still a challenge, represents the start of much needed sector-wide data capturing to significantly strengthen lobbying and advocacy efforts. Some important learning, however, can be distilled from this process.

Generally, the implementation of IT-based solutions on this scale is rarely straightforward or inexpensive, especially in a situation where basic building blocks such as infrastructure is sometimes in short supply. In addition, due to the absence of proper lines of communication and decision-making within NADCAO, the development of this key lobbying and advocacy tool ran into trouble early on and the resources of Alliance members (particularly those of the Black Sash) were not utilised in the most effective and constructive way.

Meanwhile, at the legislative coalface, the *Legal Practice Bill* remained a contentious issue. In the advice office sector and among paralegals several

Staff at the Qholaqhwe Advice Centre in the Free State  
 Photograph: NADCAO ©



debates were going on: whether or not paralegals and/or CAOs should be part of this statute; whether legislative recognition would guarantee the sector's sustainability; and whether government funding was indeed the most appropriate road to sustainability, with concerns emerging about the negative impact it might have on the objectivity of CAOs.

In the run-up to the new draft *Legal Practice Bill* in 2009 (which included paralegals, but not CAOs), another fundamental debate emerged within NADCAO about what exactly was meant by 'paralegal' and 'community advice office'. It was difficult, at the time, to reach consensus on these definitions.

Each member of NADCAO's Steering Committee had different views on all the issues mentioned above, leading to an impasse in terms of how to proceed with regard to the *Legal Practice Bill*. Consequently, NADCAO's Secretariat turned to the sector it was mandated to serve to gauge the views of CAOs and paralegals on these matters.

The NADCAO Secretariat lobbied the DOJ&CD to hold consultative meetings with the community advice office sector through the Alliance's provincial fora to discuss the *Legal Practice Bill*. The emphasis of these meetings was on how to take the interests of CAOs forwards, as paralegals were included in the latest draft. This drew criticism from some of NADCAO's Steering Committee members that the Secretariat was departing from NADCAO's focus on the sector as a whole. However, in the latter half of 2009, NADCAO's Secretariat organised a consultative forum with more than 200 CAO paralegals to discuss the Bill. Some interviewees noted that none of the Alliance members attended any of these consultations. In the end, the final and joint position of CAOs and paralegals was that NADCAO should advocate for a separate statute, albeit still within the broader justice system, and for recognition and government support.

NADCAO's Secretariat consequently communicated this position to the DOJ&CD. The Department responded positively by removing paralegals from the draft *Legal Practice Bill* and proposing that a separate piece of legislation be developed, focusing on CAOs and paralegals.

Overall, in assessing the Secretariat's handling of this process, some interviewees felt that the Secretariat did the right thing, as its line was based on consultations with the sector, and because it would buy NADCAO more time to empower the sector to better articulate its own needs and interests. However, some Alliance members felt that NADCAO's National Coordinator was naive to accept the Department's proposal to develop a separate statute, considering that the DOJ&CD had not made an outright commitment to such a process and that government generally had been promising to support and recognise advice offices and paralegals since 1994 but had yet to fulfil any of these promises. External stakeholders also criticised NADCAO as a whole

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for missing a vital advocacy opportunity and failing to provide direction for the sector due to its inability to reach consensus internally and develop a collective advocacy strategy.

These events again brought the disconnection between NADCAO's Steering Committee and its Secretariat to the fore and raised questions about whose interests were being advanced by the Alliance.

## Balancing advice office sector and Alliance member interests

As NADCAO transforms itself into an independent organisation, and with provincial fora and provincial coordinators up and running, some critical issues have come to the fore; how to balance the interests of the advice office sector and those of Alliance members, and what role NADCAO members should play at national and – perhaps particularly – provincial level.

NADCAO is effectively becoming another player and competitor in a sector already saturated with human rights and access to justice organisations, some of whom have been working with advice offices for over 50 years. This has led to perceptions that the Alliance is overtaking its members and other service providers in the sector. As has been seen above, NADCAO's Secretariat pushed processes forward and/or leaned towards the advice office sector in instances where it resolved that it was necessary, especially when Alliance members were unable to move at the same pace as the sector. As NADCAO grows in its new form and sets out its future trajectory, the Alliance needs to clearly articulate and communicate its role and functions to its members and partners so that the collective spirit of the Alliance is not lost.

At the same time, and within the context of an unfavourable funding environment, Alliance members and other NGOs in the sector will have to reconfigure their role as NADCAO takes forward its mandate and as advice offices gradually become stronger and more adept at articulating what they need from other stakeholders. In doing so, Alliance members and other service providers need to listen to the community advice office sector, re-examine where they can add value and adapt their services accordingly. Some Alliance members are thus moving into the provision of accredited training for paralegals – this is the case with AULAI, CCJ, CLRDC, KCHR and RULAC.

# VII. Conclusion

NADCAO is an important and pioneering example of how donors and NGOs can be brought together to share resources for the benefit of an entire sector. In a relatively short time, the Alliance has been able to celebrate many achievements, but it has also been through a steep learning curve.

Many challenges emerged as the Alliance set about its work. The bulk of lessons learnt ultimately refer back to weaknesses in the early stages of NADCAO – for example, taking synergy between its members for granted, not clearly defining and delineating its governance and decision-making structures and processes, and not spelling out mediation and conflict resolution mechanisms. NADCAO's overall response has been to convert itself into a formal organisation. While this has been welcomed by many as hailing a sounder foundation for the Alliance as it moves forward, it is important that NADCAO specifies and communicates its role and strategies clearly and that it nurtures and stays true to the spirit of collaboration and partnership that was the bedrock of the Alliance at its inception.

The South African community advice office sector is set in a particular context and has its own idiosyncracies. However, many development organisations and sectors around the world have similar concerns about sustainability in a recessionary global economy and an adverse funding environment. As such, and despite its trials and tribulations, NADCAO represents a novel way of addressing sustainability and funding challenges that could have appeal beyond the South African advice office sector.

# List of Interviewees

| Name               | Organisation   | Position  | Date of interview                         |
|--------------------|--|---|---|
| Marcella Naidoo    | Black Sash   | National Director   | 14 Sept 2011                              |
| Lucille February   | Bonteheuwel Advice Office<br>NADCAO                      | Project Coordinator<br>Western Cape Provincial<br>Coordinator                                       | 4 Aug 2011                                |
| Bongani Khumalo    | CCJ  | Programme Manager   | 1 Aug 2011                                |
| Winnie Kubayi      | CCJ  | Director  | 1 Aug 2011                                |
| Langa Mtshali      | CLRDC  | Director  | 2 Aug 2011                                |
| Vuyiswa Sidzumo    | CS Mott Foundation                                       | Director: South Africa  | 8 Aug 2011                                |
| Kalay Pillay       | DOJ&CD   | Acting Chief Litigation Officer   | 8 Aug 2011                                |
| Zaid Kimmie        | FHR  | Manager: Monitoring &<br>Evaluation   | 10 Aug 2011                               |
| Hanif Vally        | FHR  | Deputy Director   | 10 Aug 2011                               |
| Kelvin Horn        | KCHR   | Director  | 17 Aug 2011                               |
| Vela Mdaka         | LASA   | Regional Coordinator:<br>KwaZulu-Natal  | 1 Aug 2011                                |
| Brian Nair         | LASA   | National Operations Executive   | 28 July 2011                              |
| Greg Erasmus       | NADCAO   | Former National Coordinator   | 19 Oct 2009<br>8 April 2010<br>8 Aug 2011 |
| Joe Japhta         | NADCAO   | Programme Coordinator   | 29 Aug 2011                               |
| Nomboniso Maqubela | NADCAO   | Interim National Coordinator  | 3 Aug 2011                                |
| Schalk Meyer       | North West University Law Clinic<br>AULAI<br>AULAI Trust | Director<br>Former Chairperson<br>Former Programme Manager  | 20 July 2011                              |
| Patrick Pringle    | RULAC  | Head: Queenstown Office   | 23 July 2011                              |
| Terwin de Vos      | RULAC  | Coordinator: Community<br>Outreach  | 17 Aug 2011                               |
| Joanne Harding     | SCAT   | Former Director   | 3 Aug 2011                                |
| Shaun Samuels      | SGS Consulting   | Consultant: CS Mott<br>Foundation   | 10 Aug 2011                               |
| Gerald Kraak       | The Atlantic Philanthropies South<br>Africa Office       | Programme Executive:<br>Reconciliation and Human<br>Rights  | 4 Oct 2011                                |
| Sabelo Mfeka       | Ukhahlamba Paralegal Advice<br>Office<br>NADCAO          | Paralegal<br><br>KwaZulu-Natal Provincial<br>Coordinator and Chairperson<br>of the provincial forum | 1 Aug 2011                                |



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## Case Study

### **JOINING FORCES FOR THE POOR:**

Alliance-building for social justice in South Africa and the story of the National Alliance for the Development of Community Advice Offices