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BRIEF 7:
AFRICAN INDIGENOUS KNOWLEDGE SYSTEMS IN THE CAO
SECTOR IN SA

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LIST OF ACRONYMS AND ABBREVIATIONS

ACQ	Case Study 2
AIDS	Auto-Immune Deficiency Syndrome
AULAI	Association of University Legal Aid Institutions
AWAT	Case Study 3
CAO	Community Advice Office
CAOSA	Centre for the Advancement for Community Advice Offices of South Africa
CBA	Cost-benefit Analysis
CBJS	Community-based Justice System
CBP	Community-based Paralegal
CBPR	Community-based Participatory Research
CCJD	Centre for Community Justice and Development
CCL	Case Study 9
CCMA	Commission for Conciliation, Mediation and Arbitration
CLAP	Case Study 1
CLRDC	Community Law and Rural Development Centre
COIDA	Compensation for Occupational Injuries and Diseases Act
DAO	Daliwe Advice Centre
DCS	Department of Correctional Services
DHA	Department of Home Affairs
DoH	Department of Health
DoJ&CD	Department of Justice and Constitutional Development
DoL	Department of Labour
DSD	Department of Social Development
E&SR	Economist and Senior Researcher
EPWP	Extended Public Works Program
FA	Finance Administrator
GBV	Gender-based Violence
ID	Identification Documents
IDRC	International Development Research Centre
IOM	International Organization for Migration
JRS	Jesuits Refugees Services
KZN	KwaZulu-Natal
LAOM	Case Study 6
LHR	Lawyers for Human Rights

MCAN	Case Study 10
MD	Managing Director
MSF	Médecins Sans Frontières
NADCAO	National Alliance for Development of CAOs
NGO	Non-governmental Organisation
NPO	Non-profit Organisation
OA1	Organisational Affiliate 1
OA2	Organisational Affiliate 2
OA3	Organisational Affiliate 3
OA4	Organisational Affiliate 4
OA5	Organisational Affiliate 5
OMO	Case Study 7
P4P	Pay for Performance
PBF	Performance based financing
PfR	Payment for Results
PI	Principal Investigator
RACB	Case Study 8
RBF	Results-based financing
RC	Research Coordinator
RCP	Refugee Child Project
RLT	Rural Legal Trust
RULAC	Rhodes University Law Clinic
SA	South Africa
SACC	South African Council of Churches
SANAC	South African National AIDS Council
SAPS	South African Police Services
SANCO	South African National Civic Organisation
SASSETA	Safety and Security Sector Education & Training Authority
SAULCA	South African University Law Clinic Association
SCAT	Social Change Assistance Trust
SCSA	Save the Children South Africa
SRCB	Case Study 4
SRCI	Case Study 5
SWEAT	Sex Worker Education and Advocacy Taskforce
UIF	Unemployment Insurance Fund
UKZN	University of KwaZulu-Natal
UK	United Kingdom

UN	United Nations
UNHRC	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development
VE	Village Enterprise

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1 African ways of knowing justice and governance

Sustainable Development Goal 16 (SDG16) refers to access to justice in all its myriad forms. Writers on SDG16 draw attention to the important role played by everyday justice providers such as paralegals in improving access to justice, particularly for indigenous peoples (Denny & Laws: 2019). They point out the justice gap that exists because indigenous people do not approach the formal justice system, because of the alien language and culture they encounter. SDG16 urges governments to ensure access to justice for all, particularly marginalised and indigenous people. CBPs can help to close this gap in access to justice.

This goal is furthered significantly when African ways of knowing justice are considered. African ways of knowing (epistemology) have been described amply by Ruffin (2019) in terms of the systems African people historically attached to a particular land and are fundamentally expressive of their civilisation, socio-political, economic and cultural identity. African ways of knowing justice and governance are of particular importance in the paralegal sector where service recipients grapple with the complexity of living within traditional, indigenous African knowledge systems and customs that are operating within formal structures that were developed by colonial powers and remain heavily influenced by Western values and norms even after the colonial era.

Much of the literature on African ways of knowing speaks to the contrast between two worldviews, the western worldview and the indigenous worldview. The western world view of justice was brought to South Africa by the adoption of Roman Dutch law, with its formal codes, and authoritarian processes (Martins 2015). In contrast, African traditional justice systems are mostly unwritten and linked to traditional customs and “values passed down through the generations as the customary law regulating life in traditional communities” (Stapleton 2007:4, in Martins 2015). The traditional justice system is localised and community-based. According to Nyamu-Musembi (2003:12), community-based justice systems respond to the immediate needs of the local people, and are “interwoven with people’s livelihood and therefore grounded and of immediate relevance.” Traditional systems are thus more flexible and can adapt to the changing needs of communities, from which they were derived.

Writers like Wanda (2013) argue that the materialistic outlook of the West undermines the value of interconnectedness that is characteristic of the African way of perceiving and behaving in the world. Newton Garver (1968, in Wanda) explains the fundamental value of interconnectedness: *“Much of who we are depends on our ability to act in concert with each other. This is true of our physical survival. Few of us would live for more than a few days, and none of us would have matured into adults without the ongoing support of various forms of interactions. This interdependence is also true of our*

community and cultural life. Our language, our knowledge, our arts, all of our social structures, and even much of our sense of self are a function of our capacity for interactions.”

In the justice sphere, Wanda (2013) argues that indigenous restorative practices help to address persistent questions of alienation, marginalisation, discrimination and social and cultural exclusions. Indigenous law and customary court processes “*are generally concerned with finding solutions that will restore peace and harmony to the community than their adversarial counterparts*” (Curran and Bonthuys, 2004:19). Furthermore, this restorative nature of the traditional justice system “*is of great value to those that need to get on with the daily business of living and working in close knit communities*” (Wojkowska and Cunningham, 2010:98).

As Wanda notes, a restorative approach can help a community to organise itself so it can “*rediscover its sense of humanness (utu, ubuntu) cultivated in an Afrikological epistemology of unity and complementarities in relationships with humankind and nature.*” (Wanda 2013:8) In a judicial trial situation, Afrikology’s holistic approach to justice means there is a shift in focus from the clash between lawyers to the unearthing of truth. In this process, which is inclusive and non-adversarial, the values of truth and reconciliation are prized above those of conviction or acquittal. (Wanda, 2013).

African ways of knowing connect to indigenous people in their language, culture, and traditional community-based justice practices. In South Africa CBPs started filling the gap in justice because the formal Roman-Dutch law was so alien to local communities. The data gleaned from focus groups with service recipients and interviews with CBPs shows how the paralegal-led justice system delivers services that are appreciated and highly effective.

Studies investigating decolonising research have received much attention in recent years. There has been particular interest in participatory research, where indigenous people become the researchers and not merely the researched. Keikelame & Swartz (2019:1) maintain that “*for research to be relevant and thus improve the quality of life of indigenous people, it should be driven by indigenous worldviews, cultural values and a language relevant to the indigenous group with whom research is undertaken.*” They also point out that decolonising research is not only about methodology but also about opening spaces for local knowledge and experiences to flow. In this study, the focus groups play a crucial part in facilitating these aspects.

This chapter explores the features of African knowledge that were revealed by participants during focus groups and interviews, as well as through the case narratives (in the database) that were reviewed.

2 Evidence from Service Recipients and CBP Interviews

This section presents data collected during focus groups with service recipients and interviews with CBPs at the ten CAOs, organised by province. One of the reasons CBPs are successful is their use of indigenous restorative justice in their service delivery. The data in this section captures the voice of service recipients as they discuss their culture and what it means to them to have CBPs who are linguistically and culturally accessible to them. The cases below preserve the voices of the participants.

2.1 Eastern Cape

2.1.1 Case Study 1 (CLAP)

2.1.1.1 Case One: Traditional and formal approaches to dealing with rape

Matrix 1 Participants’ accounts of traditional and formal approaches to dealing with rape

Case One	
Data source: Focus Group	Topic: Rape
<p><i>“What happens in the homes is that rape is not discussed; you first report to the chief. The chief (traditional leader) then contacts the (traditional) police to find the rapist. Back in the day they used to redeem each other and reconcile with goats. However, the traditional process does not have a counselling element; whereas when you go to the paralegal, they provide counselling, call the police, will take the victim to the clinic and open a case. The paralegals go back to the chief and update him. If the family wants to pursue a civil claim with a chief, they are assisted to do”</i>. PN-FG1</p>	
<p><i>“They (paralegals) speak to the families and inform them about the alternative justice process and the police route. Sometimes the victim will accept the police route, but the perpetrator will not. The paralegal informs the families and advises them what to do. They speak to the families and tell them exactly what they can expect. Sometimes the victim will accept this route, but the perpetrator will not. And I tell them that the perpetrator is likely to do this again because of this situation. But I tell them that he won't be able to do it again if we report it to the police, even if he has many goats to pay to the family of the victim”</i>. PN-FG1</p>	
<p><i>“In the villages, some people still do not accept arresting someone for rape. This office visits us, raising awareness that rapists should be arrested. It is painful for a victim to live with a perpetrator. Not everyone accepts the legal route; they still believe in the restoration and reconciliation through goats. The office is doing a good job – it's doing enough – but people have not all accepted”</i>. PO-FG1</p>	

The focus group at St Johns provided insight into the traditional approach to handling a crime such as rape – both in times past and currently. The quotes demonstrated that the participants were knowledgeable about both the traditional approaches and the paralegal approach to handling such a crime. The narrator appreciates the counselling that takes place in the office of the CBP in an area of life that is not customarily talked about in the home. Collaboration between traditional justice structures

(the chief) and paralegal structures (the CAO/CBP) was apparent and appeared to benefit the victim. Participants in the focus group engaged actively in a discussion about how rape is handled. In South Africa, the formal (Western-based) legal system, through the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32/2007, classifies rape as a crime; evidence to be presented in court is to be gathered by the state police and in-state medical facilities. This places CBPs in the position of having to explain to victims of rape and their families that under the law they cannot simply follow the traditional system of restoration and reconciliation until the perpetrator has been tried and sentenced under the formal legal system.

Finding: As a member of the community in which they work, the CBP is well-placed to understand the difficulties victims and their families may experience due to the tension between the traditional (indigenous) and formal (Western) legal systems.

2.2 Free State

2.2.1 Case Study 3 (AWAT)

2.2.1.1 Case Two: Initiation School and Mediation

Table 1 Examples of comments by participants regarding Initiation Schools and Mediation

Case Two	
Data source: Focus group	Topic: Initiation Schools
<p><i>“I run an initiation school for the boys. It is a family run business (to initiate boys - where they go to the mountains a learn how to be a man is part of our culture). The cost is R3500 per child. Of this amount, R950 is for the person who does the clip (cut). The parents brings the food for their children, and we provide protein (meat). We work with the local clinic. Boys are checked for high blood pressure, sugar diabetics, T.B., HIV, and hepatitis before they are admitted for initiation. The police also conduct an inspection of the facility.” T-FG1</i></p> <p><i>The problems are with the boys that want to go to the mountain without informing their parents and parents who do not pay in full. AWAT office helps to address these challenges. They always arrange mediation between me and the boys’ parents. We decided not to enrol boys whose parents have not paid.” T-FG1</i></p> <p>Comment by another participant</p> <p><i>“We also had initiation activities for young women. It is no longer practiced; girls claim that they have been taught at home what to do and not do and how to behave (in Sesotho this is called “Kilauwe”). People now are destroying our culture, and our culture is being distorted (utswa lebolong litiza).” TT-FG1</i></p>	

Focus group participants at AWAT talked of their experiences with initiation schools. These are deeply cultural events, but are also run as businesses that make money. One participant mentioned the help

he received from the CAO in the form of mediation between the business owner and the boys' parents about payment.

Various participants comment on the cultural appropriateness of the CBPs who understand their language, respect their culture, and therefore make the law and justice accessible.

Finding: The CBP understands the activities that occur at initiation and therefore offers the culturally appropriate service method of mediation to negotiate problems that arise.

2.2.1.2 Case Three: Respect for Language

Table 2 Paralegals explain in our language

Case Three	
Data source: Focus Group	Topic: Language
<i>“Most of us are Sotho speaking. When paralegals explain legal challenges, we can understand. Most of us did not go to school; therefore, they have to simplify legal issues for us.” TO-FG2</i>	

Finding: Participants express appreciation for the way CBPs speak their language, and can also explain simply the legal position.

2.2.1.3 Case Four: Respect for Culture

Table 3 Example of comments made by participants regarding Respect for Culture

Case Four	
Data source: Focus Group	Topic: Respect for culture
<i>“Culture is very important for us; we like our culture. Culture is about respect. Mandela brought democracy and destroyed a culture of respect. Children have rights; they do not respect their parents.” TN-FG2</i>	

Finding: Culture is very important to participants, who also express their concern for all the changes that the new dispensation has brought into their traditional ways of living.

2.2.1.4 Case Five: Justice as a cultural construct

Matrix 2 Justice as a cultural construct

Case Five	
Data source: Focus Group	Topic: Justice as a cultural construct
<p><i>“Societies understand what is just and unjust and is culturally conditioned and is determined by context and time.” TJ-FG2</i></p> <p><i>“Culture and tradition play a significant part in the construction and implementation of primary justice system.” TR-FG1</i></p>	
Data source: Interviews with CBPs	<p>Cultural neutrality <i>As a Sotho nation there’s no culture that needs to be observed when carrying out our duties.” TP-02</i></p>

In the focus groups, service recipients expressed the view that culture plays a role in one’s understanding of justice, which is rooted in tradition.

In interviews, however, one of the CBPs expressed the importance of remaining culturally neutral – suspending her own culturally-based belief system – in her work as she needed to be able to work with clients from different cultural and religious backgrounds without bias.

Finding: Participants understand that justice is a cultural construct, rooted in tradition.

2.2.2 Case Study 2 (ACQ)

2.2.2.1 Case Six: Mediation in indigenous

Table 4 Examples of comments regarding mediation in indigenous culture and as facilitated by CAOs

Case Six	
Data source: Focus Group	Topic: Restorative justice
<p>Domestic Violence <i>“My wife came here to ACQ to report me. They phoned me and say I must come to the office. I was well received, and before we started they counselled us and told us to be free. We were both given an opportunity to explain our side of the story. The main problem was my wife accessed my phone and saw images that were not appropriate. She was not satisfied with the explanation I gave her as to why those images were in my phone. My wife was jealous, and it drove her crazy. Equally, I was disturbed by the accusation.</i></p>	

The mediation helped us to communicate better with one another. The way they handled the interaction between myself and my wife made a difference. The process was handled in dignity and respect for family. They respect people's views. The stress was reduced and lifted. This office prevents divorces. Culture is hundred percent appropriate to be used for family disputes and GBV.” QK-FG2

Gender-Based Violence (GBV)

“Culture is hundred percent appropriate to be used for family disputes and GBV. The law that came with white people is not African law. The traditional way of solving marital disputes is that the husband will be taken to the chief (‘morena’, in Sesotho) and he organises a meeting between the two families. Thereafter, he organises the men to meet separately and women to meet separately. Then, combines the two groups and adjudicates, or calls the couple to order. We need to go back to our culture; the white people’s law made us abandon our culture. It is difficult for us older people to speak to a child – worse when he does not have a family. How can he or she adjudicate on a matter he has no experience of, does not know? Women knew their role and men knew their role. Democracy since 1994 destroyed our culture.” QX-FG2

A male participant in the focus group described having had a positive experience with mediation provided by the CAO. While his wife had approached the office concerning a problem between them, the way the staff handled the issue made him feel respected and acknowledged. He appreciated the way the conflict was handled with dignity and respect for both parties. He emphasised the value of mediation in the context of their indigenous culture.

A second participant described how mediation/community justice was handled by the chief in the past. This participant assessed European influence and law as having a damaging effect on indigenous culture and knowledge systems, undermining the capacity of communities to resolve domestic issues.

Finding: Mediation is an effective strategy for addressing domestic conflict, and is compatible with cultural restorative justice approaches adopted by CBPs.

2.3 KwaZulu-Natal

2.3.1 Case Study 5 (SRCD)

2.3.1.1 Case Seven: Gender-based violence

Table 5 Example of comments by participant regarding Gender-Based Violence

Case Seven	
Data source: Focus Group	Topic: Gender-Based Violence
<p><i>“I was so afraid when I was in the magistrate box. I felt like I was being arrested. The first thing they asked me in the witness box is where I live. So I told him that I live in Impendle. They asked, ‘Where in Impendle do you live?’ And I said, ‘I live at home – my own home.’ Then they said, ‘How is it that your husband comes</i></p>	

home but does not find you there all of these days?’ So, I exclaim that, ‘Now I live at home! You can even call my children – they will be witnesses!’ Indeed, sometimes he (husband) would come. And when he would arrive, I would wake up the children and say, ‘Wake up! Go and open the door for your father!’ I think that was something from the Lord. And while the child was opening the door, I would grab my coat, take whatever clothes I could find and flee to his sister. And then live with his sister for a while. But then I would quickly see that I am now a burden to them. So I had a small workshop close to the taxi rank. And after seeing how burdensome it was knocking on people’s doors at night, I would then run away at night through the bushes, sometimes crawling on my stomach in fear – fearing that when people would see me they would think that I am cohabitating. There’s no bed; there there’s no blanket there. I would just sit on a tiny little bench until dawn. And at dawn, I would wake up, look around if there’s anyone who sees me, fearing what they will say. I would open the door when the sun was out, so that people would think I have come to work. Then I would sit down and work. He would also ask them, ‘Where is your mother?’ – because he heard me speak. And the children would tell him that I had fled to his sister’s place.” I-FG1

In the focus group at Implende, a female participant recounted her story of being married to a man who took a second wife. At first it appeared that they were married according to customary marriage, as she referred to herself as the first wife. It was not clear if the customary marriage was registered at Home Affairs or not. However, later in her account it became clear that they were married by civil (formal) law. The man’s taking of a second wife would thus have been unlawful while he was still married to the first wife. She reported being abused by her husband through beatings, verbal abuse and specific threats that he would kill her.

The participant went to the CAO for advice on a number of occasions, as well as to the police and the local magistrate. She eventually filed for divorce, but found the process and procedures difficult to understand. In due course, divorce proved helpful to this woman because she was granted the house and the livestock so she could live with her children. Later, the abusive husband returned and persuaded the wife to allow him to stay and then to bring his other children. Traditional ceremonies were performed for the children – showing the importance of traditional rituals in the home. There were tensions underlying the rituals, as well, as the participant was afraid that if the marriage did not go well she would be blamed for bringing bad luck. The account illustrated the positives and negatives of life in both the western and traditional justice landscapes.

Finding: The case reveals a lifetime of passion intrigue, abuse and loyalty. The story traverses multiple worlds as the client moves between the CAO, the police, the traditional authority and the court.

2.3.1.2 Case Eight: Culture and rape

Table 6 Culture and Rape

Case Eight	
Data source: Interview with CBP	Topic: Culture and Rape
<p><i>“There are traditional basic beliefs. In one of my cases a victim was raped and the mother did not report the case because she believed in the culture that the person who has raped, the perpetrator, must agree to this course of action. So the mother told the child that the perpetrators would pay for damages with a goat and a cow. So, after paying all those things it meant that he would not be arrested. So, in that way, the mother did not report the case. So, the child is 14 years old and she was raped in 2019 on her way from the village back to her home. Meanwhile that guy was already proposing to her – making advances – and he saw her walking back from home and after she denied the proposal he then raped her.</i></p> <p><i>At the time the child did not report at home that this terrible thing had happened, but the mother discovered when the child became pregnant. The girl fell pregnant during the rape. She told the mother she was afraid to approach her and tell her what happened. After five months the girl miscarried the baby. After the miscarriage the family confronted the perpetrator’s family. I think the girl lost the child because of stress; she was traumatised by her experience.</i></p> <p><i>When the mother came to our office, she said that she did not see a need to report the case because the perpetrator chose to pay for damages. When I asked her how she could let that happen she said that she believes in God and ancestors that she is a forgiving child of God, thus in that way she could not bring herself to report the case. Yet meanwhile, the child was there crying. When I asked the child whether she accepted what her mother was saying, she said that she did not. I then informed her that she couldn't report the case because she was underage and that her mother would have to report the case on her behalf. After that she continued crying and weeping and I didn't know what to do. I then went to the police and I informed them that the child wanted to report the case, but the mother did not want to, for religious and cultural reasons. The police took the matter over and opened the case. The case is still pending.</i></p> <p><i>The mother said that I pushed her child to open the case, so there was nothing that is involving her anymore about this case. She informed that she had told her pastor about the case and the pastor was going to decide what she's going to do about that. The child is now afraid of her mother, she can't talk to her mother about the case. The perpetrator is 25 years old.</i></p> <p><i>I referred the girl to Thuthuzela Care Centre in Pietermaritzburg, located at the hospital for medical care and trauma counselling.</i></p> <p><i>In the case of an adult who does not want to open a case, we do arrange for them to do mediation, either at home, or they come to the office. We mediate them until they come to the same agreement. When we see that they have agreed, then the mediation is complete.” IP-01</i></p>	

The interview with the CBP illustrated the difficult task of paralegals in balancing the needs of a child, who was a victim of rape, against the wishes of her mother when traditional ways of dealing with rape are at odds with the formal law, which sets out the procedure for police and the court system to come into play.

Finding: When traditional ways of dealing with rape conflict with western (formal) law, the role of the CBP is to engage with traditional leaders, police, pastors and trauma centres, as well as to conduct mediation to bring the parties to agreement on a way forward.

2.3.1.3 Case Nine: Relationship with traditional councillors

Table 7 Example of comments by a participant regarding Relationship with Traditional Councillors

Case Nine	
Data source: Interview with CBP	Topic: Traditional Councils
<p><i>“We can do anything, but we have a relationship with traditional councillors. If we want to do anything concerning the traditional house, then we communicate with them. The traditional councillor enforces the protocol of the royal house. Here, if you are you are going straight into the royal house, you cannot wear pants. Because of our understanding of culture, community members do not want us to work under government. They say government officials do not bother about culture. It is important to be of the same culture because when the client comes to the office with a cultural matter, I need to be able to handle that case concerning that culture.” IP-01</i></p>	

One of the CBPs expressed an awareness that the service recipients value their (the CBPs) understanding of the lived reality of the recipients.

Finding: CBPs have a close and respectful relationship with the traditional councillors, and this is appreciated by the service recipients.

2.3.2 Case Study 4 (SRCB)

2.3.2.1 Case Ten: Acknowledging the ancestors

Table 8 Example of comments by participants regarding Acknowledging the Ancestors

Case 10	
Data source: Focus Group	Topic: Acknowledging the Ancestors
<p><i>“I built a home for myself and slaughtered three cows to atone for my many mistakes at home – because if I did not do that, I would not be here today. My ancestors kept me to see my money and do with it what I could not do before. I thanked my ancestors, built my home, fixed some mistakes, installed solar panels for the whole house and drilled a borehole for constant supply of water with that money. She (the CBP) really helped me a lot.” BS-FGI</i></p>	

A participant received a large pension pay-out for which he had waited twenty-eight years. He was extremely grateful to the CBP, but in addition it was time to acknowledge and thank the ancestors.

Finding: CBPs attend to the socio-economic needs of service recipients when this is required. Recipients acknowledge this valued assistance within the context of their gratitude to the ancestors.

2.3.2.2 Case Eleven: Gender-based violence and customary marriage

Table 9 Examples of comments by participants regarding GBV and customary marriage

Case Eleven	
Focus Group	GBV and customary marriage
<p><i>“In the mornings when he had to go to work, I would bring him tea on a tray and place it near the headboard. And whenever he drank it, he would insult me and toss the cup over, saying that he would not drink cold tea.”</i></p> <p><i>“Unfortunately, I lived during a time when women were encouraged to be patient within the marriage, yet all the while he would beat me. Sometimes I would flee and go to his mother, my mother-in-law, and she would reprimand him, but he would not listen. It was very sad because I loved this man and I wanted to respect him. Even our culture demanded that we love and respect the husband no matter what. We have three children together. “</i></p> <p><i>“This time around I ran away to my parents. My father said he does not want to see me troubled; I must go back to my household immediately. My mother accompanied me and apologised to my husband that I ran away. But the situation kept persisting until my father passed away.”</i></p> <p><i>“When he lost his job, I took him under my wing as a man whom I loved. As time went on some vacant land became available, we went to those sites and got one. The problem is that he didn't have any money to buy the site. I had to take out my own money to buy the site. Because he was well-loved in the community, I did not want him to be embarrassed so I bought the site in his name. Now that I think about it I don't even think he knows where that document is. I built a home on that site, I built it with great joy and out of the willingness of my heart. I did this for my husband whom I loved because he was not working at the time.”</i></p> <p><i>“These are all part of the problems that I brought here to the office. One of the things the paralegal advised him against spending so much time with the neighbours. He spends all his time at the neighbour's house and comes back home after 7 p.m. The paralegal really played her part to the best of her ability. She conducted mediation for us and provided counselling for my children. She really did her job very well. I am happy that I came to this office because she was able to listen to our matter with much patience. She has never made any untoward utterances. She has also never spread my matter to other people in the community. And what I like the most is that she has never taken any side. She was very fair and unbiased because she would reprimand me as well as reprimand him. Her solution after listening to all our complaints was that she would collect R1000 from each of us and then, end of the month, both of us would come to collect it and go shopping together. She insisted on this so that we could heal and find peace. After counselling us, he agreed to this. I was also encouraged by the session that we had, I had hoped that the situation would get better. When we arrived at the office, we arrived full of anger but by the time we left everything was just so beautiful. He even promised to come back to the main house.”</i></p> <p><i>“That is when I realised that if we came back to the paralegal, I would be wasting her time. As long as we are eating at home and have electricity, I am satisfied. I even started preventing him from charging his phone at</i></p>	

the main house to encourage him to buy electricity. The situation is beyond the paralegal capacity to solve. I was only trying to make his life better. I have been patient since December 1986 up until now. The reason I tolerated it for so long is because I was afraid of the shame. I was afraid of the shame from my parents as well as the shame from his parents and community. I even thought of my children and what would happen to them should I leave. There was a point where I decided that I was not going anyway, because I had worked hard to build this home. I told him that I was tired of fleeing to other people's houses. I told him that whoever wanted to leave must leave, but I would not be going anywhere. After that day, he left. There is nothing else that I can do because I am married to this man. When he is sick and has no one to care for him, I will wash him and take him to hospital.” (BD-FG1)

In the focus group at Bergville, a female participant told the story of her marriage. She had married according to custom and performed all the rituals related to *lobola* and the other customary marriage requirements. Life as a married woman had begun very well until her husband began to abuse her when he was drunk. The abuse was both physical and emotional. She stayed in the marriage to meet cultural expectations. When life became unbearable and she was afraid he would harm her and the children, she tried to flee to her parents, but her parents enforced the cultural norm. As the pattern continued, the interplay between cultural expectations, shame and compassion for the man she still loved are clear.

Finding: CBPs handle the gender-based abuse many women encounter in their marriages. In customary marriages cultural expectations may serve to hold women trapped in abusive marriages.

2.3.2.3 Case Twelve: Embracing African ways of knowing

Table 10 Example of comments by participant regarding Embracing African Ways of Knowing

Case Twelve	
Data source: Interview with CBP	Topic: Cultural Sensitivity
<p><i>“The CAOs understand the customs and dynamics of the community. Therefore, they are aware of how to handle cases in the community because they know the culture of the community. They embrace the African ways of knowing; this is the strengths of CAO.” CP-01</i></p>	

Finding: Service recipients appreciate that CBPs embrace African ways of knowing; and this is their strength.

2.3.2.4 Case Thirteen: Culture and Ukungena

Table 11 Example of comments by participants regarding Culture and Ukungena

Case Thirteen	
Data source: Interview with CBP	Topic: Culture and Ukungena
<p><i>“It's important to have a knowledge of cultural and indigenous things, because clients don't come with Western-related problems only. Some problems they come with are African and indigenous issues. Let me make an example with a client that came here once before. A client born in 1994 came here and her husband (traditionally) who used to work at Bowers died in a car accident in February. They had been living together as husband and wife since he had paid lobola. The husband's brother approached the woman and asks to have children with her, this custom is called (ukungena). The family fought with her to accept the custom and also fought over the provident fund money. If you look at that, you will see that it is a cultural matter because I had even told them that she is a wife, and according to culture the brother is allowed to ask the wife for children, but it has to be done through the Elders. It is indigenous knowledge like that which becomes important to know in situations like this.”</i> BP-01</p>	

Finding: CBPs have a deep understanding of cultural practices and are therefore able to explain the situation to service recipients and guide them about the correct way to proceed.

2.3.2.5 Case Fourteen: Culture and witchcraft

Table 12 Examples of comments by participants regarding Culture and Witchcraft

Case Fourteen	
Data source: Interview with CBP	Topic: Culture and Witchcraft
<p><i>“In Bergville we call them headmen. I even have all their numbers because I work with them. For instance, I will refer someone to them who suspects witchcraft. I do that because the matter will eventually and ultimately end up in the court of the king and I will have no authority to issue remedial actions. There are certain things even we cannot do that are outside of our ambit and jurisdiction. So, therefore, we have to refer it to other stakeholders. So all we can do is follow up and find out if they were helped. If they're not happy, then we refer them to cooperative governance and traditional affairs. I work a lot with the kings.”</i> BP-01</p>	
<p><i>“There are some cases where, for instance, people suspect each other of witchcraft. We take such cases to people called headmen and we ask who those headmen are in their respective areas.”</i> BP-01</p>	

Finding: CBPs work closely with traditional leaders on issues such as witchcraft, which are part of the culture, and outside the scope of the CBPs.

2.4 Limpopo

2.4.1 Case Study 6 (LAOM)

2.4.1.1 Case Fifteen: Comparative experiences of GBV and mediation

Matrix 3 Comments by participants regarding Comparative Experiences of GBV and Mediation

Case Fifteen	
Data source: Focus Group	Topic: GBV and Mediation
<p><i>“I am from Congo. It happened that my sister’s husband didn’t want to give her the money for food. Sometimes he used to come at night and lock the door. It was wintertime; she stayed outside almost up to twelve o’clock midnight. I remember that time she went to Lawyers for Human Rights. First I didn’t know the legal advice office [MLAO], and later went to the legal advice. I remember they helped her, and she got a protection order. He stopped abusing her. MB-FG1</i></p> <p>Comment from another participant <i>Let’s talk about my culture – because I am a Burundian, he is Congolese, there. My culture, also: when you have a conflict between wife and husband, first we have to sit down as a family and discuss the issue. That’s the way I did with my sister. We sat down first, we discussed as a family – as a brother, sister and husband – but we saw that we failed. The husband didn’t want to do that. So that’s when my sister took the matter to Lawyers for Human Rights. She did not like the court route. The legal advice office sat down with the husband, the wife. They try to advise him and that what we can do. But they also failed. So they took the matter to court. Even us: we sit down first and finish the matter, where possible, before it goes to court.”</i></p>	
Data source: Interview with CBP	Topic: GBV and Mediation
<p><i>“There is also that ubuntu thing that we carry, which foreigners cannot bring. People conduct service by the book; but Africans: we got ubuntu.” MP-01</i></p>	

As Musina is a border town, the CAO’s clients come from a variety of countries. In the focus group, a Congolese man and a Burundian man discussed their ways of dealing with gender-based violence (GBV). In both cultures, this type of conflict was handled by the family sitting down and talking. The court route is actively avoided. Only when the way of mediation fails, after seeking help from the CAO or Lawyers for Human Rights, do people resort to the courts.

Finding: Comparative experiences of GBV and mediation indicate that mediation is culturally appropriate, and only when mediation fails, do people resort to the court system.

2.4.1.2 Case Sixteen: Culture and disciplining children

Table 13 Examples of comments by participants regarding culture and Disciplining Children

Case Sixteen	
Data source: Focus Group	Topic: Culture and Disciplining children
<p><i>“I think culture plays an important role – in as far as gender based violence is concerned. For example, I can take a situation whereby when you want to correct the wrong behaviour of a child. You hit them. And it’s culturally acceptable to beat a child. Now you come with the same child in South Africa: you beat a child - the Children’s Act is on your shoulders and you are actually imprisoned. And as a result, you find a situation whereby you say, “When you are with the Romans, do as the Romans do you”. See? So it’s that disparity between culture and the law. And culture – one of the two – should be elevated, such that both sides should be functional. Either we elevate the culture to law, or we elevate the law to culture. MM-FG-2</i></p>	

In the focus group at Musina, service recipients discussed the disparity between culture and the law with regard to the discipline of children. Both South African participants and those of other African nationalities expressed a sense of gulf between their customary behaviour and the law (formal) of the land. The participants were knowledgeable about the legislation (*Children’s Act 38/2005*) which prohibits corporal punishment of children. They talked of obeying the law, but uneasily.

Finding: Across indigenous cultures people find a disconnect between their culture and the formal law of the land. Ordinary people talk of obeying the law, but reluctantly.

2.4.2 Case Study 7 (OMO)

2.4.2.1 Case Seventeen: Culture and mediation

Matrix 4 Examples of comments by Participants regarding how Mediation is Culturally Appropriate

Case Seventeen	
Data source: Focus Group	Topics: Mediation is culturally appropriate
<p><i>“Protection orders are destructive to deal with GBV. You need an approach that restores families. We need to go back to our roots. Fifty-fifty is not our culture: a woman is a woman.”</i></p> <p><i>“GBV is still increasing: women and men are still being killed by their partners. Protection order allows the men to be arrested; mediation restores cultural values.” (O-FG1)</i></p>	

<i>Today we demand fifty-fifty. Now seventy-thirty. The new way of doing things is breaking culture. Gender dynamics are visible: there is a difference between a man and a woman.” (O-FG2)</i>	
<i>“OMO respects culture. I am from Zimbabwe. We are at home – they do not discriminate. Some people are sensitive to culture.” (O-FG3)</i>	
Data source: CBP Interview	Mediation is culturally appropriate
<i>“The way I embrace cultural values is that when coming to respect of the father of the house. The mother of the house must make sure she respects the father of the house.” OP-01</i>	

In the focus group at Opret, participants again expressed their preference for an approach that restores families in the way that was customary in the past, when mediation was deeply interwoven into the culture. In the same discussion, some male participants expressed the view that women are now regarded equally to men (‘50/50’) and that this trend is, in fact, going further – to the point that women are considered more important than men (‘70/30’). This was seen to not align with culture, and to create dis-ease.

Finding: Mediation is culturally appropriate, but can also seem to make women equal to men, and even more important than men, according to some male participants.

2.4.2.2 Case Eighteen: Manifestation of culture

Matrix 5 Examples of comments by participants about How Culture Manifests in Many Forms

Case Eighteen	
Data source: Focus Group	Data source: Interview with CBP
<i>“People who have some disagreement in burial society, stokvels and churches come here. They respect church protocols. They encourage men to talk rather than kill their women.” (O-FG3)</i>	<i>“First, I do not get angry with people coming here. I engage God every step.” “I do not pray to the ancestors; I believe in God.” (OP-01)</i>

Participants talked of their experiences in burial societies, stokvels and churches, all important institutions that rural people interact with in their daily lives. When conflict arises in these fora, the CBPs encourage cultural ways of resolving disputes.

Finding: Culture manifests in many forms, and when conflict arises and arrives at the CAO, cultural ways of resolving disputes are employed.

2.5 Mpumalanga

2.5.1 Case Study 8 (RACB)

2.5.1.1 Case Nineteen: Positive and negative aspects of culture

Matrix 6 Participants' Comments Illustrating Positive and Negative Aspects of Culture

Case Nineteen	
Data source: Focus Group	Topic: Negative aspects of Culture
<p><i>"I was married according to customary marriage regime which is taken as marriage in community of property. There was a 24-year age gap between myself and my husband. My husband fell ill, and I took him to hospital. The family (his siblings and his son from the previous marriage) came and took him out of the hospital to a traditional healer without informing me and they refused to tell me where he was being treated. He died and they told me not to attend the funeral and they evicted me from our house. At the time of his death he was working at the municipality. This office helped me to get a letter of authority from the magistrate's court and assisted me to get my husband's ID back from the family and went with me to the police to ask my step-son to remove the locks from the house so that I could move back to my house."</i> BT-FG-1</p>	
Data source: Interview with CBP	Topic: Positive Aspects of Culture
<p><i>"This place is a melting pot of languages: siSwati, isiZulu (BBR South), Tsonga, (midland), IsiZulu & Tsonga, (BBR North) isiPedi, Isipulane, undocumented language, not yet recognised. Whole area: people can understand almost all these languages. BBR North and South: still high prevalence of initiation of girls and boys. People here are multilingual."</i></p> <p><i>"Paralegals have a good relationship with traditional leaders. This approach is the best weapon. Most of the area is under traditional leadership; municipality is under the dictate of traditional leadership. Land belongs to the traditional leadership; municipality resides in tribal land. African culture plays a major role; it is important not to undermine but respect culture. Mediation roles depend on both parties, e.g., case of inhlawulo, both parties must agree. It is important not to undermine the value of people. There are cases that the CAO does not mediate or get involved in. Like the case of a doctor that was involved in defrauding SASSA by issuing false medical reports, for people to qualify for medical or disability grant. This a pure criminal case; we did not involve ourselves with. In fact, the person who had brought this case to us was directed to SAPS."</i> BP-01</p> <p><i>"We take into consideration tradition and norms; it strengthens our work. We treat people with kindness and respect. Politeness and respect go a long way. We conduct workshops for traditional leadership on GBV."</i> BP-02</p>	

In the focus group, one participant talked of how sometimes the negative aspects of traditional culture emerge. A widow, in African culture, can be abused by the late husband's family who believe his possessions should be theirs after his death. In this example, the widow was assisted by the CBP, who was familiar with both the positive and negative aspects of the culture, to assert her rights and regain her house.

Finding: CBPs are familiar with both the positive and negative aspects of the culture, in their efforts to assist service recipients.

2.5.2 Case Study 10 (MCAN)

2.5.2.1 Case Twenty: Culture and complexity

Matrix 7 Examples of comments by participants regarding Culture and Complexity

Case Twenty	
Data source: Focus Group	Topic: Culture and Complexity
<p><i>“I came here having the problem where the father of my children passed away. There was some drama between our families. We had been separated for two years before he passed away, but we were still customarily married. When he died, his workplace called me. His family came to my home to ask for me as per tradition. My family responded per tradition that they needed to pay a fine as I was not staying with him when he passed away because he was abusive, and I left him to go back home. My family turned them back. They came back and paid the fine. Thereafter my family accompanied me to his parents’ home where the funeral was taking place. At the funeral both families sat separately.</i></p> <p><i>I came here to the office, long after the funeral, to ask her what I should do – because he was not a permanent worker, but he was on a contract. I told Sis Daphne everything and how much I had been verbally abused by his family. His brother took all his documents from me. Even my son who had been living with his father at the time of his death could not access his documents required to claim for injuries at work.</i></p> <p><i>During the funeral, his family said that I was not crying but laughing. They said that I left my husband and didn't explain that I left because of abuse; he was very heavy-handed. A commotion ensued and I defended myself. We even reported this to the traditional authorities so that they would not be amazed when they saw two funeral processions coming from different households.</i></p> <p><i>His brother was failing to claim because they kept asking for me. Sis Daphne was helping me and was going to arrange a meeting with the employer after a period of mourning. I was so heartbroken, because we had not finished and accomplished the mission that we both began.</i></p> <p><i>My story is very long. My husband paid lobola for me. I was the first wife and he had four wives. When we were living together, he invited his second wife to come and live with us so we lived together in one house. So, he left to go and work in the mines. In 2012 we relocated to Schoemansdal. When we got there, I got really sick and was in a wheelchair for three years. Throughout that time, he took care of me and nursed me in my sickness. He would also take me to the doctors. The second wife left, and I remained with him. After some time, he lost his job while I was still sick. In 2018, I was able to be free from the wheelchair and could walk. When I was healed, I lived in Swaziland for a few months because this is where I came from. I have three children but currently live with four. He got a way of making money again and he married two women and built each one a home. After that he became an illegal miner. On my birthday, he asked me if he could bring me his daughter (from an extra marital affair) he had been hiding for an introduction. I refused. I told him that I was not that daughter's mother, and this was my home. I told him to send that daughter to her mother. In total, he had twelve children. Presently he can't afford to maintain the children he has fathered. The issue is that we didn't live a very peaceful life, after he took two more wives. At some point I even took up a protection order against him.</i></p> <p><i>As much as he would pay for my doctor's fees, he never came to comfort me or ask me how I was doing. He even chased away my child when she became pregnant. He failed to take my other child to school and my child matriculated without his help and got pregnant in her first year of college, so now he wants to chase her away as well. He then came and assaulted me and my children for resisting his other daughter. We live a life of</i></p>	

emotional and physical abuse. He keeps telling me that the police won't do anything because he knows the police. After that I reported him to the police. Then he threatened that he would bomb the house down because he works with explosives. Even uses the car he bought for me to do his illegal mining activities. When the car breaks down, I am the one who has to fix it. So, I ended up telling him to take it all together so that I would be free from the burden.

He came and assaulted my children. So I reported him to his family and his family told me that I should consider him a dead man because they are all so tired of him. I asked him what the children are going to eat because they have to go to school, and he said he doesn't need anyone. This whole ordeal made me sick and depressed. They are even holding on to my child's graduation certificate so she can't apply for anything. He doesn't buy food; he doesn't do anything, and I have to pay for my medications. The worst part is that my mother died in December and he refused for me and my children to go to the funeral, so I took my children and left by force and left his extra marital child he had asked me to look after. When I came back, I discovered that he had left that child with the neighbour with no food or money. As time went on, my neighbours and my children urged me to leave this man and go find a home of our own. They even asked me to leave his child whom I had taken in, but I told him that this child was innocent and I would take him with. I asked them, if we found a new stand, what would I use to build a house – because I have to pay medical fees and food. I don't care about my husband anymore.

I think Sister Daphne was right: you should not leave your house, because if you leave that house, where will you stay and where will you get money to build a new house? Stay and get a protection order so that he doesn't do anything to you.” NP-FG-2

Data source: Interview with CBP	Culture and Complexity
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“In dealing with and handling issues and cases you need to understand the culture of community, tradition and how to respect elders. When approaching villages for workshops, we go through tribal authorities to ask permission to conduct workshops. You give them content of the workshop; they mobilise for you.

In dealing with people we practise equality; we give platform and due respect to all whether it is a man or woman.

The CAO is an advice office; we help educate and advise people.” NP-01

At MCAN, a participant in the focus group told a complex and riveting story. Given the space, the attention and the interest of the facilitators and the group, a story of culture and complexity emerged. The female participant was married by customary law, and treated badly by the inlaws when the husband died. The husband had looked after her during a long illness but had also abused her physically and emotionally. At times, the woman felt supported by her husband’s family, at other times she was spurned by them. The husband married more wives, according to custom, and built each a house, but was unable to support the wives or the twelve children he fathered. The additional extra-marital child was initially rejected and later embraced.

The participant’s telling of her story was interspersed with expressions of grief due to the recent death of the CBP, who had played an integral role in the story. The narrator acknowledged the late CBP who had traversed the harsh details of culture and everyday hardship with the participant.

Finding: CBPs handle cases of great complexity, culturally, legally and emotionally.

2.5.3 Case Study 9 (CCL)

2.5.3.1 Case Twenty One: Witchcraft

Table 14 Example of comments by participants regarding Witchcraft

Case Twenty One	
Data Source: Focus Group	Witchcraft as a Tactic
<p><i>“Let me explain: these farmers, when they see that you are gaining support, they pay the other workers to remove you. For instance, I’ve been at the farm for a very long time and they have attempted to bribe me to remove the other occupants. But I can’t do that because I live with these people and we all work together. Clients all have the same Farm Owner and sometimes disputes arise between the occupants. Some even labelled me as a very troublesome person and threatened to resort to witchcraft. Yes, the farmers instigate us against one another.” LV-FG-1</i></p>	

In the focus group at Leandra, participants spoke freely about their lives. One participant pointed to the ‘underbelly’ of culture: witchcraft. The story alludes to the tensions within the farm worker community, which sometimes manifested with the use of witchcraft to scare off an opponent.

2.5.3.2 Case Twenty-Two: Respect for culture

Table 15 Examples of comments by participants regarding Respect for Culture

Case Twenty Two	
Data source: Interview with CBP	Topic: Respect for culture
<p><i>“It is important for us to observe and respect culture in our daily work practices. In our area we have two chiefs: Ndzudza and Nala.</i></p> <p><i>In dealing with the community it is essential to respect, observe culture and etiquette. Some cases need to be referred to the traditional court or the court would refer cases to CAO – or maybe just for consultation with the CBP. The CBP must ask permission from the chief to handle some cases – just as a sign of respect to the chieftain. We mix constitutional laws and traditional law while not offending anyone. For us, using law is a last resort: ours is a conciliatory approach.</i></p> <p><i>We observe culture with our clients. For instance, a widow does not hold the queue when she comes for consultation: she will get priority so she can quickly go home. With our staff, we had a case where a staff member (CHW) was widowed. For a duration of time she was made to do office work, which minimised the amount of contact with the community, in respect for culture.</i></p> <p><i>Other than culture, we also have respect for religion. We deal with people from diverse religious backgrounds.</i></p>	

There are cases that we don't deal with – we refer to SAPS straight away. Cases such as rape, child abuse. – we had a case where a teacher was abusing a learner, for an example – we refer to SAPS.

Above all, CBPs must be helpful, real; show respect and good manners all the time.” LP-01

“In a place like ours, question of culture becomes very complex. Mpumalanga is divided into two cultures: Ndebele & Swati (North). Ndebeles are very culture-conscious; they do not compromise. It becomes difficult to execute our job; for example, a Zulu gets summoned to appear before a Ndebele chief that he does not recognise. Chiefs are legitimate legally; we try to forge a sound relationship with the chief. We embraced our two-way referral system. We deal with customary marriage – no registration of marriages – and it becomes problematic when one partner dies under such circumstances. This is when we refer to the chief; or, at times, the chief will refer such a case to us. We have our ways of dealing with issues, and as CBPs we respect culture. We know those practices that makes us African; for example, dealing with widows culturally.” LP-02

“Because we deal with couples therapy sometimes, we find couples coming for therapy but refuse to be assisted by me because they can't be discussing their issues with a young person. That is also because of culture.” LP-03

“We don't entertain rape cases – we refer to SAPS directly. We don't have skills to deal with either the victim or perpetrator. We have established a relationship with organisations that deal with women's abuse cases.” LP-02

“We once dealt with a case of a child that said they had been raped and a mother who said the child was lying. This case was referred to the court.” LP-03

“We are told not to sympathise – like, cry during counselling session with a client. Clients can lie sometimes.” LP-02 & 03

We live in a diverse community; we need to give space to whatever comes to CAO. Formal law lacks the understanding of customary law. ” LP-02

Finding: CBPs express the complexity of living in diverse communities, with multiple languages, cultures, and also religions. Their many relationships mean they have a free flow of referral lines across state service providers and tribal leaders.

3 Evidence from Case Narratives

Many cases illustrate how the CBPs straddle different world views in resolving problems for their clients to obtain access to justice.

3.1 A Case of Unlawful Dispossession of Traditional Land

Description of issue

MS, who was a second wife, came to the office for advise as the first wife was selling their husband's land without the husband's approval.

The client was married within a customary marriage, and the land in question fell within the area of jurisdiction of the traditional leadership and hence the tribal authority.

Action taken by the CAO

The paralegal handling the case documented the following action on the case.

MS was advised to go to the tribal authority with her husband.

Outcome of the case

The paralegal followed up the on case and found that the Tribal Authority had intervened. The first wife was stopped and the people who had bought the land were told by the Tribal Authority to leave.

Analysis of the case

The CBP recorded very little about this case, but what is recorded demonstrates the CBP's grasp of the traditional cultural context in which the case was situated. The CBP's decision to refer the client to the Tribal Authority was appropriate and proved effective. There is likely to be a long-standing working relationship between the CAO and the local Tribal Authority. Hence, the follow-up yields the information the CBP is seeking.

This case can be categorized as a 'legal advice' case and sub-categorized as a 'land dispute'. While the focal conflict was a land issue, the context suggests that other domestic issues existed within the home and between the family members.

Site of impact and social impact of the action taken by the CAO

The site of impact of the action taken by the CBP in this case is analysed in Table 16.

Table 16 Community-based Paralegal’s Strategic Referral to Tribal Authority

Obtaining a positive outcome for particular individuals or groups	There was a positive outcome for the second wife and the husband. It would have been useful if the case had been recorded in greater detail to provide insight into the dynamics within the family as a whole and how tensions were managed within the family discourse.
Changes to law and policy	<p>This case was directly concerned with cultural and customary issues, with which the CBP, as a member of the community, was knowledgeable. The client and her husband accepted the CBP’s advise that they go to the Tribal Authority.</p> <p>The CBP assisted in the implementation of customary law, which was clear and consistent in this case.</p>
Institutional changes	CBPs deal with a diverse range of cases. Dealing with land matters falls into one of sixteen types of legal advice. In this case, the conflict was confined to the context of the home, although it was centred on the issue of land.
Symbolic and discursive changes	The case did not deal with possible cracks beginning to appear in the customary use of land as held over the centuries by the tribal authority. In customary law, if one builds one takes a risk, as rural land holding is governed by ‘ <i>permission to Occupy</i> ’. The <i>inkhosi</i> and <i>induna</i> need to be informed if occupation of a structure on the land changes hands.
Expanding democratic space	The client was empowered to approach the CAO with the problem she saw developing in the household. Perhaps she could not approach her husband directly, because of the power imbalance in a home where the first wife would wield more dominance in the household. The fact that there was an additional institution to which she could turn enabled her to exercise her rights as a concerned citizen.
Strengthening public interest law sector	The public interest law sector was enhanced by demonstrating its usefulness in allowing a woman in the status of the second wife to have an outlet, the CAO, for her complaint. This outlet cooperates seamlessly with the tribal authority as needed, strengthening all the public institutions.

The social impacts (direct intangible benefits) resulting from the intervention are indicated in Table 17.

Table 17 Community-based paralegal’s strategic referral as a source of social impacts

Impact on quality of life	The case documents a positive outcome for the second wife and husband. Still, the narrative stops short of dealing with the ramifications of the family tensions that may have arisen in the extended family in the wake of the incident.
Cultural impacts	Customary law in land tenure and use is shown to be upheld in this case. While not dealing with the implications of the first wife getting so far in the selling of land that purchasers were actually on the land and had to be ordered to vacate, the case also shows the client's empowerment, as a woman, in coming forward with her complaint.
Community impacts	The resolution of the case involving customary and civil institutions demonstrates to the community how governance can be made to work at the local level.

3.2 A Case of Lobola Dishonoured

Description of the case

<p>Client’s story</p> <p>MM, complained that he had paid a lobola of R5 000 to his father-in-law as an agreement, but after that the father-in-law wanted his daughter back.</p>
<p>CBP advised the client to go to the High Court for a protection order.</p>

Outcome of the case

When the client came back, he explained that he had got his wife back. The case was resolved successfully.

Analysis of the case

In African custom, marriage is negotiated between two families through the practise of *lobola*. A sum of money (or cattle) is agreed upon, and after the man partially or fully pays this lobola, the couple will begin to live together as husband and wife. In this case, the *lobola* was agreed upon and paid but, after that, the agreement was dishonoured by the wife’s father.

The case falls into the category of *legal advice* and the sub-category *relationship and child-related issues*. Such issues include care/custody and contact with minor children, pregnancy damages, and other issues related to civil or customary marriage.

The service offered by the CBP, according to the record, was a referral to the High Court for a protection order. The record lacked detail. This type of dispute over *lobola* and its meaning for the families could more appropriately be handled through mediation conducted at the CAO.

Site of impact and social impact of the action taken by the CAO

The site of impact of the action taken by the CBP in this case is analysed in Table 18.

Table 18 Impact of the intervention in a case of lobola dishonoured

Obtaining a positive outcome for particular individuals or groups	The client obtained a resolution for his complaint. He thus obtained justice.
Symbolic and discursive changes	The CBP had a good understanding of the customary situation in which the client found himself. She decided, however, to advise the client to make use of the formal system of the courts. This illustrates how the CBPs operate in multiple paradigms.
Expanding democratic space	The client found a democratic space opened for him by the CBP. She showed him that he could use the institutions of the state – even as a rural, marginalised person – to obtain resolution.
Strengthening public interest law sector	The public interest law sector is strengthened when CBPs move between the formal and the informal arenas.

The social impacts (direct intangible benefits) resulting from the intervention are indicated in Table 19.

Table 19 Lobola dishonoured as a site of social impact

Lifestyle impacts	The client's daily life was impacted positively when the marriage negotiations were respected and his wife returned.
Cultural impacts	Had the CBP used customary traditions to resolve an issue so clearly in the realm of customary law, there would have been greater cultural impact.
Community impacts	Social networks and cohesion would have benefitted if customary law had been utilised in this particular case.

4 Findings across all ten CAOs

- As a member of the community in which they work, the CBP is well-placed to understand the difficulties victims and their families may experience due to the tension between the traditional (indigenous) and formal (Western) legal systems.
- The CBP understands the activities that occur at initiation and therefore offers the culturally appropriate service method of mediation to negotiate problems that arise.
- Participants express appreciation for the way CBPs speak their language, and can also explain simply the legal position.
- Culture is very important to participants, who also express their concern for all the changes that the new dispensation has brought into their traditional ways of living.
- Participants understand that justice is a cultural construct, rooted in tradition.
- Mediation is an effective strategy for addressing domestic conflict, and is compatible with cultural restorative justice approaches adopted by CBPs.
- The case reveals a lifetime of passion intrigue, abuse and loyalty. The story traverses multiple worlds as the client moves between the CAO, the police, the traditional authority and the court.
- When traditional ways of dealing with rape conflict with western (formal) law, the role of the CBP is to engage with traditional leaders, police, pastors and trauma centres, as well as to conduct mediation to bring the parties to agreement on a way forward.
- CBPs have a close and respectful relationship with the traditional councillors, and this is appreciated by the service recipients.
- CBPs attend to the socio-economic needs of service recipients when this is required. Recipients acknowledge this valued assistance within the context of their gratitude to the ancestors.
- CBPs handle the gender-based abuse many women encounter in their marriages. In customary marriages cultural expectations may serve to hold women trapped in abusive marriages.
- Service recipients appreciate that CBPs embrace African ways of knowing; and this is their strength.
- CBPs have a deep understanding of cultural practices, such as Ukungena, and are therefore able to explain the situation to service recipients and guide them about the correct way to proceed.
- CBPs work closely with traditional leaders on issues such as witchcraft, which are part of the culture, and outside the scope of the CBPs.
- Comparative experiences of GBV and mediation indicate that mediation is culturally appropriate, and only when mediation fails, do people resort to the court system.
- Across indigenous cultures people find a disconnect between their culture and the formal law of the land. Ordinary people talk of obeying the formal law, but reluctantly.
- Mediation is culturally appropriate, but can also seem to make women equal to men, and even more important than men, according to some male participants.
- Culture manifests in many forms, and when conflict arises and arrives at the CAO, cultural ways of resolving disputes are employed.

- CBPs are familiar with both the positive and negative aspects of the culture, in their efforts to assist service recipients.
- CBPs handle cases of great complexity, culturally, legally and emotionally.
- CBPs express the complexity of living in diverse communities, with multiple languages, cultures, and also religions. Their many relationships mean they have a free flow of referral lines across state service providers and tribal leaders.

5 Conclusion

The evidence obtained from focus groups, interviews with CBPs and case narratives across all ten CAOs demonstrate the importance of African indigenous culture to service recipients across a range of issues. Indigenous culture was seen to be respected and valued by local people and the CBPs, being from the same communities, were able to take appropriate action with knowledge of, and insight into, the local language and customs.

Interviews with the CBPs at case study 4 and case study 5 in KwaZulu-Natal illustrated the CBPs' in-depth understanding of the cultural dimensions of rape and ukungena, in particular. These indigenous traditions must be respected and reconciled with the very different, but dominant, domain of formal law. Such legal pluralities require CBPs to possess a depth of knowledge of both systems as well as the skill to balance the use of these systems with sensitivity to the fact that the families experiencing distress may find the norms of formal law alien and unable to satisfy their cultural and social needs.

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