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The need for recognition and regulation of paralegals: An analysis of the roles, training, remuneration and impact of community-based paralegals in South Africa

Summary

This article seeks to critically analyse the role of community-based paralegals (CBPs), mainly within a South African context. Having defined CBPs, it focuses on the roles, functions and qualifications required of CBPs in South Africa. The current lack of statutory recognition and regulation of CBPs in the country and proposals for future recognition and regulation are considered. This article briefly refers to examples of paralegal work and regulation in other countries. Arguments for and against the statutory recognition and regulation of CBPs within the legal profession are discussed. The article warns against over-regulation of the paralegal profession, but nonetheless calls for legislative recognition and regulation to provide the impetus for further expansion and development of existing paralegal programmes. CBPs are found to play a pivotal role in improving access to justice, particularly within the poor and rural communities in which they operate.

Die behoefte vir toekomstige erkenning en regulering van regsassistente: 'n Ontleding van die rolle, opleiding, vergoeding en impak van gemeenskapsgebaseerde regsassistente in Suid-Afrika

Hierdie artikel probeer om die rol van gemeenskapsgebaseerde regsassistente (GGRAs) krities te ontlee, hoofsaaklik binne 'n Suid-Afrikaanse konteks. Nadat GGRAs gedefinieer is, is die fokus op die rol, funksies en kwalifikasies wat vereis word van GGRAs in Suid-Afrika. Die huidige gebrek aan statutêre erkenning en regulering van GGRAs in die land en voorstelle vir toekomstige erkenning en regulering word oorweeg. Hierdie artikel verwys kortliks na voorbeelde van die werk van regsassistente en die regulering daarvan in ander lande. Argumente vir en teen die statutêre erkenning en regulering van GGRAs binne die regsberoep word bespreek. Die artikel waarsku teen oor-regulering van die paralegal beroep, maar maak tog 'n oproep vir wetgewende erkenning en regulering vir verdere uitbreiding en ontwikkeling van bestaande paralegal programme. GGRAs het 'n deurslaggewende rol om te speel in die verbetering van toegang tot die regstelsel, veral in die arm en landelike gemeenskappe waarin hulle bedrywig is.

1. Introduction

South Africa is still a relatively young democracy with one of the most progressive Constitutions in the world that promotes and gives everyone the right of access to justice.¹ With this said, as a developing economy, it is a country that remains rife with poverty and low-income earners, the majority of whom live in rural areas and cannot afford the legal services of a qualified attorney or advocate.² “Being one of the most unequal societies in the world” in a country that enshrines equality as one of its founding constitutional values, these legal services, particularly in civil matters, remain unavailable to the majority.³ The advice that community-based paralegals (hereafter CBPs) provide to the indigent narrows the legal assistance gap. As Grant notes, there are economic limitations to the exercise of the right to legal assistance. This research will show that community-based paralegals may play a positive role in this regard.⁴

This article will argue that there is a strong argument in favour of the statutory recognition of paralegals as part of a solution to bring about more equal access to legal services and promote justice. This is in light of the fact that CBPs are able to provide certain legal services at no cost to the client, as opposed to existing qualified legal professionals in private practice.

However, one must also take into account the arguments against their full recognition, including the argument that they often lack formal legal training and very seldom have tertiary education which may potentially result in inferior advice and services being provided to clients. There is also the argument that paralegals lack an effective regulatory body and hence there is a real danger that a paralegal may act as a loose cannon.

This study seeks to critically analyse the role of paralegals, and more specifically, within the South African context. It focuses on the roles, functions and qualifications required of CBPs in South Africa; their current statutory recognition and regulation (if any), and proposals for future

1 *The Economist* 2010. Cf. sections 34, 35 and 38 of the *Constitution of the Republic of South Africa*, 1996.

2 Black Sash Education and Training Unit 2005. <http://www.paralegaladvice.org.za/> (accessed on 20 September 2011).

3 Mqabi 2013. The extent of the severe bias in favour of criminal over civil legal aid in South Africa is, to a large extent, beyond the scope of this article. South Africa's gross inequality is evidenced by its Gini index being at an alarmingly high 63.1 as of 2009. The Gini index measures the extent to which the distribution of income or consumption expenditure among individuals or households within an economy deviates from a perfectly equal distribution. A Gini index of 0 represents perfect equality, while an index of 100 implies perfect inequality. By way of comparison with two other developing countries in the same year, Fiji listed at 42.8 and Paraguay at 51.0. Of the countries listed for 2009, South Africa's Gini index indicated the greatest inequality. World Bank 2013. <http://data.worldbank.org/indicator/SI.POV.GINI> (accessed on 27 May 2013).

4 Grant 1989:55.

statutory recognition and regulation, including, but not limited to aspects such as the rationale for the initial inclusion and subsequent exclusion of paralegals, in general, in the current version of the Draft Legal Practice Bill. This article will briefly refer to examples of CBPs' work in other countries. Due to a shortage of existing written research on paralegals, some use is made of a personal interview with a leading and experienced CBP who has a wealth of first-hand practical experience and knowledge of CBPs in South Africa and in KwaZulu-Natal, in particular.⁵

The article seeks to define CBPs and considers current laws and regulations in place, if any, which recognise and/or regulate CBPs. It discusses arguments for and against the statutory recognition and regulation of CBPs within the legal profession.

2. Defining a community-based paralegal

There are two main types of paralegals. Some work and operate in commercial law or public interest law firms and others work with and serve poor, mainly rural communities, or CBPs. This study deals with the latter only.

According to McQuoid-Mason, paralegals may be law graduates who have no license to practise as advocates or attorneys, or ordinary lay people who have no formal legal qualifications, but who have been trained in giving legal advice in administrative issues and in legal education skills.⁶ CBPs are thus local people who are trained or experienced in various practical aspects of the law, are able to give legal advice, counselling, and who possess administrative and legal education skills.⁷ Golub states that they may have specialised training to provide legal help to disadvantaged groups, and are often members of such groups. Alternatively, they may be ordinary community members who use the law to help themselves and others.⁸ A CBP is, therefore, not fully qualified as a legal practitioner in the traditional sense, but still engages in legal-type work. CBPs may be paid by NGOs or may be community-based volunteers.⁹ An example of this kind of work is interviewing and questioning clients about their legal problems. According to Mtshali, CBPs are paralegals who offer free information and advice to people living in underserved, mainly rural, areas.¹⁰ They deal with legal problems that include housing and debt matters, family and

5 Mtshali 2012. Mr. Langalihle 'Langa' Mtshali, formerly Executive Director of the Community Law and Rural Development Centre (CLRDC) and Founding Board Member of the National Alliance for the Development of Community Advice Offices (NADCAO).

6 McQuoid-Mason 2005:207.

7 The South African School of Paralegal Studies 2011. <http://www.paralegalstudies.co.za/source/2011> (accessed on 5 October 2011).

8 Golub 2000:297.

9 Golub 2000:297.

10 Mtshali interview 2012.

maintenance issues, basic contracts, employment, social services, labour, and other government service delivery matters such as pensions, the Unemployment Insurance Fund (UIF), the *Compensation for Occupational Injuries and Diseases Act (COIDA)*, Road Accident Fund claims and dependents' benefits. In eThekweni, if CBPs require more information or knowledge with regard to a specific matter or legal question posed by a client, they contact the Community Law and Rural Development Centre for guidance and advice to assist a client.¹¹ A similar network of CBPs has been created by the Centre for Criminal Justice across KwaZulu-Natal based at police stations.¹² Therefore, despite the lack of a formal legal education, CBPs provide basic legal assistance to the indigent. They have a basic knowledge of the legal principles relevant to the field in which they are advising and, as a result, are able to work independently to perform legal tasks.

3. Current roles of CBPs

3.1 Roles

A lack of access to justice in civil matters is not simply a local, but also a global problem.¹³ In communities throughout the world, people struggle with legal issues related to housing, family, debt, crime, property, and other matters that affect their daily lives and well-being.¹⁴ Those who are poor, geographically isolated, or otherwise vulnerable often cannot obtain assistance in solving their justice problems and often suffer under discriminatory laws, or lack the legal means to enforce norms that should protect them; consequently, they require assistance in facing everyday legal dilemmas.¹⁵

11 Mtshali interview 2012.

12 Centre for Criminal Justice 2013. <http://ccj.ukzn.ac.za/Homepage.aspx> (accessed on 26 May 2013). Approximately twenty paralegal coordinators provide free legal services to members of the public at fifteen support centres in KwaZulu-Natal's interior. The centres are run by women from the community, all of whom have paralegal qualifications from the University of KwaZulu-Natal. Offices are based at police stations and magistrates courts in order to be better able to work with the criminal justice system. Coordinators provide legal advice, mediation, as well as educational and counselling services to clients, especially women and children, helping them to learn about, and gain access to their rights and solve their problems. Staff members also work in partnership with government departments and private organisations on behalf of clients, facilitating monetary claims and enabling them to use the law to improve their lives.

13 Golub 2000:298.

14 Golub 2000:298.

15 Black Sash Education and Training Unit 2005.

Paralegal 'advice offices' play a complementary role to the legal profession in the delivery of legal aid services.¹⁶ They operate at the grass-roots level where communities first come into contact with the law.¹⁷ Paralegal advice offices play an invaluable role in screening initial legal complaints and resolving legal disputes before referring potential litigants to other legal practitioners.¹⁸ CBPs represent a "paradigmatic shift" in the delivery of legal services, similar to the proliferation of rural public health workers in response to the formal medical profession's inability to meet community health needs.¹⁹ In other words, they fill in the gaps where the legal system falls short of providing these legal services. In 1998, the National Legal Aid Forum recognised the importance of paralegals in providing legal advice, when it called for a new legal aid structure that should:

- build on the infrastructure of existing advice offices;
- increase the educative function of paralegal advice offices by using paralegals and Street Law Trainers;²⁰
- provide support for paralegals from lawyers;

16 Black Sash Education and Training Unit 2005.

17 Black Sash Education and Training Unit 2005.

18 At the National Legal Aid Forum in 1998, it was suggested that paralegal advice offices should be incorporated into the legal aid system at two stages. The first stage should be to provide information and advice at community level, and the second should be to refer clients to legal services for representation. For the first stage, Legal Aid South Africa builds on the infrastructure of the existing paralegal community advice centres in the country; empowers advice offices by including paralegals and law-related education trainers to provide an educational component; empowers advice offices by including some professional lawyers and candidate attorneys on their staff; encourages the use of alternative dispute resolution to resolve disputes, and deals with preliminary issues where people require representation. If disputes cannot be resolved during the first stage, the community advice offices should move to the second stage and refer clients to law clinics, public defenders, private lawyers, community legal service centres or justice centres. McQuoid-Mason 1999:53.

19 Abdulai 2005:1.

20 Street Law South Africa 2013. <http://www.streetlaw.org.za/index.php/about-us/about-us> (accessed on 26 May 2013). Street Law trainers are professionally qualified attorneys or academics and students under their supervision. Street Law South Africa provides, inter alia, training aimed at enhancing the capacity of law-enforcement officials, health-care practitioners, lawyers, prosecutors, candidate attorneys, paralegals, voluntary legal advisors, rural participants and educators with the intention of assisting communities in accessing both their legal and human rights. Street Law also focuses on creating a culture of legal and human rights awareness among both the in-school and the out-of-school youth, providing lessons to over 300 schools on democracy, human rights and legal education, reaching over 30 000 learners annually. The programme addresses current issues facing the youth, such as HIV/AIDS and discrimination, racism, crime and violence, xenophobia and crimes against women and children. It makes learners aware of their rights and the legal remedies they have to protect their rights and those of others.

- encourage the use of out-of-court resolution mechanisms such as mediation, and
- use paralegals as a first port of call, with referral to legal practitioners only when no solution is found.²¹

Unfortunately, none of these factors have been adequately put in place; rather, the infrastructure of existing advice offices has deteriorated; their educative potential has not been reached; lawyers still do not provide adequate support to paralegals, and procedures such as mediation have not been successfully advocated. Paralegals are utilised as first port of call in areas where legal practitioners are geographically not available. However, the potential of paralegals being used as first port of call generally and where legal practitioners are geographically accessible has not been met.²²

CBPs have a variety of backgrounds, experience, education, duties and responsibilities across a broad range of practice areas.²³ They may perform the same functions as attorneys, except those that only a licensed and qualified attorney may perform under the *Attorneys Act* 63 of 1979, such as charging legal fees for work done for clients or representing them in court. The delivery of legal services by non-lawyers before many executive administrative agencies is a well-established practice.²⁴

The role of paralegals also includes the following:²⁵

- giving legal advice (using paralegal manuals and pamphlets);
- linking local people with legal practitioners;
- taking client statements and following up on existing cases;
- referring people to health and welfare agencies;
- facilitating problem-solving with relevant authorities through negotiation and mediation;
- building networks with other paralegals and NGOs;
- training local people as to their legal rights and remedies available, and teaching them to train others;²⁶
- publicising local legal events and problems; and
- lobbying for improvements in the justice system.

21 McQuoid-Mason 1999:53.

22 Mtshali interview 2012.

23 Mtshali interview 2012.

24 National Federation of Paralegal Associations 2011. <http://www.paralegals.org/displaycommon.cfm?an=1&subarticlenbr=116> (accessed on 5 October 2011).

25 Penal Reform International and Bluhm Legal Clinic of the North-West University Law School 2007. <http://www.penalreform.org/files/rep-2007-access-africa-and-beyond-en.pdf> (accessed on 2 February 2013).

26 Schuler & Kadirgamar-Rajasingham 1992:2.

CBPs, therefore, play a highly significant role in providing basic legal services to poor South Africans. Due to the fact that the law is complex and often ambiguous, paralegals must be intelligent and have an analytical and logical mind.²⁷ They must be able to recognise and evaluate relevant facts and legal concepts as well as organise, analyse, communicate, and administer. Paralegals should also possess other interpersonal skills such as the ability to resolve conflicts, negotiate, and relate well with various types of individuals when they are in distress.²⁸ The roles of CBPs are, therefore, multi-varied with strong links to accessing basic services and social services from government departments or NGOs.

3.2 Work of CBPs

It is often very difficult to distinguish the work that CBPs do on a daily basis from that of an attorney, with similar ethical implications. CBPs must be able to identify a potential conflict of interest arising from their professional work or personal interests and know how to address it in a way that protects the interests of their office and the client(s) involved.²⁹ They must fully understand the intricacies of attorney-client privilege and the broader duty of confidentiality, and act cautiously to preserve each client's privacy, just as a qualified attorney is obliged to do.³⁰ They must uphold the highest standards of competency, professionalism, and integrity in all of their work and in their communications with others.³¹

Muralidhar points out that, unlike the rigid criminal justice system, the civil legal system inspires innovative methods of problem-solving, including alternative dispute resolution. Muralidhar argues that paralegals are well placed to be co-opted into the civil justice system to provide help to litigants.³² He views paralegals as playing a key role in promoting access to justice.³³

An understanding of ethics and professional responsibility is critical to the job of CBPs.³⁴ The expanding role of CBPs in the delivery of legal services and the ease with which private and confidential information as well as online legal resources may be found and transferred, and the increasing complex and dynamic legal environment make it essential for paralegals to be firmly grounded in ethical principles and to be well informed about the specific rules governing their conduct and that of the lawyers

27 The South African School of Paralegal Studies 2011.

28 National Federation of Paralegal Associations 2011.

29 National Federation of Paralegal Associations 2011.

30 National Federation of Paralegal Associations 2011.

31 National Federation of Paralegal Associations 2011.

32 Muralidhar 2005:264.

33 Muralidhar 2005:280.

34 Muralidhar 2005:280.

with whom they work.³⁵ In other words, they must act in accordance with the standards set for legal practitioners.³⁶

Although CBPs perform some of the same tasks as attorneys, they offer many distinct advantages over attorneys in specific contexts. For example, CBPs can focus on the justice needs of an entire community, not only the client who hires them, and they can often resolve issues more rapidly and more amicably by means of alternative dispute resolution than attorneys can.³⁷ They are particularly effective, because they are in touch with the communities in which they serve, more so than a lawyer is ever likely to be.³⁸ Due to low-entry barriers, it is much easier and less expensive to train and utilise CBPs and to deploy them to legally under-resourced areas than to do so with attorneys.³⁹ Furthermore, CBPs often know the community they serve and can, therefore, meet their needs better than attorneys would be able to.⁴⁰ They can be paid by an NGO to represent the broad needs of the community, while attorneys (with limited exceptions in the case of legal aid) take cases based on the client's ability to pay.⁴¹

The services provided by CBPs vary from giving mere advice in high-density townships to providing full legal aid services such as those provided by the Legal Aid Bureau in Johannesburg.⁴² Certain paralegal organisations such as the Black Sash focus their attention on urban areas, whereas others such as the Community Law and Rural Development Centre in Durban have a rural focus.⁴³ However, it should be noted that the Black Sash has moved slightly away from operating as full-fledged legal service providers (although this role does continue to a limited extent), and is now primarily focusing on publications and resources for CBPs. To elaborate, while continuing to run advice office centres, as of 2012 the offices of the Black Sash ceased to operate as full-fledged law clinics.⁴⁴

The CBPs' roles, as the name indicates, are 'community based'. In other words, they deal hands-on with problems that people face on a daily basis. They tend to work with the most vulnerable members of the community, assisting them with the issuing and applying for social grants, being dismissed by their employers, and domestic violence, to name but a few. They have a crucial role to play in terms of access to justice, because the network of free legal services is very narrow in terms of scope. In a rural setting, the formal free legal services are available to an individual

35 National Federation of Paralegal Associations 2011.

36 National Federation of Paralegal Associations 2011.

37 National Federation of Paralegal Associations 2011.

38 Golub 2000:298.

39 Golub 2000:298.

40 Golub 2000:298.

41 Golub 2000:298.

42 McQuoid-Mason 2000:111-142.

43 McQuoid-Mason 2000:133.

44 The Black Sash "About" (May 2014). <http://www.blacksash.org.za/> (accessed on 12 May 2014).

through the state's legal aid arm, Legal Aid South Africa (LASA). However, LASA nearly always takes the form of criminal legal aid.⁴⁵ CBPs have the capacity to fill this big gap apropos civil legal issues.

Mtshali states that the role CBPs play at the Community Law and Rural Development Centre (CLRDC) includes assisting people in knowing and understanding the social and health services available to the community; referring people to them and supporting them in this process; offering free advice services to people, and taking up individual cases.⁴⁶

CBPs thus perform a number of functions to assist indigent people who cannot afford legal assistance. They are better equipped than most attorneys in relation to specific types of cases because of the closeness they share with the communities they help. It is, therefore, submitted that, due to the broad spectrum of duties and effectiveness of their performance of those duties, they play an imperative role in allowing and increasing access to justice for indigent people.

3.3 Qualifications, accreditation and training for CBPs

Several NGOs in the justice sector provide training and accreditation for CBPs. Until recently, the CLRDC, for example, provided training in collaboration with the University of KwaZulu-Natal's Institute for Professional Legal Training, and support for a network of 56 paralegal advice offices in rural areas in KwaZulu-Natal.⁴⁷ At the end of their training, CBPs receive a diploma from the University of KwaZulu-Natal. In addition, a consortium of NGOs across five countries in the sub-region, including Lawyers for Human Rights, have formed the Southern Africa Legal Cluster Assistance Project to lobby and advocate for the legal recognition of paralegals in Southern Africa.⁴⁸ South Africa has thus used paralegal networks as a means whereby NGOs seek to provide legal services.⁴⁹

CBPs are trained on many different levels. For example, they have basic training (general paralegal skills); specialised training (on certain aspects of the law, for example, criminal law, labour law and family law); in-service practical training (for example, working with experienced CBPs in the field to learn practical skills); refresher training (keeping CBPs up to date with new laws and skills), and advanced training skills (training experienced CBPs to train others).⁵⁰

45 Van As cites various statistics which show that the significant majority of legal aid in South Africa is of the criminal variety (2005:54).

46 Mtshali interview 2012.

47 Black Sash Education and Training Unit 2005. <http://www.paralegaladvice.org.za/> (accessed on 5 October 2011).

48 Penal Reform International and Bluhm Legal Clinic of the North-West University Law School 2007.

49 Muralidhar 2005:282.

50 Black Sash Education and Training Unit 2005.

CBPs should possess the following skills, namely practical legal skills (for example, taking clients' statements, gathering evidence and drafting letters); counselling skills (for example, interviewing, listening, and giving advice); knowledge of basic laws and procedures (for example, arrest and detention, bail, civil actions and criminal charges); working with advocates (linking them to local people through attorneys); working with local people (for example, using dispute resolution); educating people about the law and legal procedures; referral skills (to advocates, doctors and social welfare agencies); administration skills (typing, filing, the keeping of diaries and records); media skills (pamphlets, booklets and newspapers), and monitoring skills (reports, questionnaires and research).⁵¹

The training of CBPs may vary from the formal training offered by organisations such as the CLRDC, leading to a diploma, to predominantly experiential learning obtained whilst working.⁵² Golub makes the interesting point that, in the Philippines, India and Bangladesh, some NGOs have found less trained and even illiterate individuals to be valuable paralegals on the basis of their being able to relate to the people and to use language which they understand.⁵³ The *Shalish* alternative dispute-resolution mechanism in Bangladesh is an example of this.⁵⁴ Clearly, the question of the degree of literacy and writing proficiency called for depends on the type of work that the paralegal will be expected to do. A paralegal writing letters on behalf of clients to government agencies, for example, clearly needs to have the requisite level of literacy as well as writing skill. However, not all paralegal work – for example, alternative dispute resolution – requires literacy. As a general rule, it is submitted that a paralegal should have a minimum standard of education to be able to adequately perform the various tasks s/he is likely to face.

Paralegals currently have two national qualifications registered with the South African Qualifications Authority (SAQA), namely a 1-year National Paralegal Certificate and a 2-year Diploma in Paralegal Studies, which ensure that CBPs qualifications are nationally recognised.⁵⁵ According to Mtshali, in order to become a CPB in KwaZulu-Natal, supported by the CLRDC, trainees must undergo a structured paralegal training programme in which they will receive a Diploma in Paralegal Studies upon its successful completion.⁵⁶ As a pre-requisite to being enrolled in the programme, they must either have a Matriculation Certificate, or, if they do not have a Matriculation Certificate, they would require a Recognition of Prior Learning certification.⁵⁷ The advantage of this is that it affords an alternative form of access to the profession to those who may have been denied the opportunity to complete their Matriculation for any number of

51 Black Sash Education and Training Unit 2005.

52 McQuoid-Mason 2000:131.

53 Golub 2000:305.

54 Golub & McClymont 2000:Chapter 4.

55 Mtshali interview 2012.

56 Mtshali interview 2012.

57 Mtshali interview 2012.

reasons. This increases the number of CBPs who are able to practise and ultimately help those in need. The aforementioned training programme is unique in that it is certified and accredited by the University of KwaZulu-Natal's School of Law, and as such it is a SAQA-recognised qualification.⁵⁸ The programme covers a wide range of basic private and public law issues as well as human rights topics, and the duration is approximately 16 months. It consists of a 4-month in-house full-time component and a 12-month Practical Certification component. CBPs have to write an initial examination in their first semester after two months of testing and intensive training and, if they are successful at this stage, they are then allowed to proceed onto the second semester. CBPs are also obliged to follow a written code of professional and ethical conduct.⁵⁹ At present, many of the trainees come from the eThekweni Municipality, and in this way the CBP training programme is also considered a crucial component of the legal training of state employees.⁶⁰

In terms of existing legislation, there is technically no required qualification to act as a paralegal, let alone a CBP. This would appear to be a lacuna in the current legal framework. However, one must perhaps be careful of implementing a blanket rule requiring qualification, failing which one cannot act as a CBP. For example, a CBP who has worked for 35 years in the field needs to be afforded experiential value, should formal qualifications be set up for paralegals. Although, in the law, paralegals currently do not need qualifications in order to act as CBPs, it is submitted that it remains imperative for them to be given adequate training to ensure that they are able to provide sound legal advice to clients. Furthermore, NGOs such as the Legal Resources Centre employ CBPs based on their qualifications and experience, which makes it an unwritten prerequisite to have such qualifications.⁶¹

3.4 The impact of CBPs and cooperation with other agencies

Golub argues that paralegals may have an impact beyond their own community through policy reform and the replication of activities from a community level. He gives the example of the NGO *Saligan* in the Philippines; he is successfully advocating for land reform with a resultant decrease in the price of land and improved share of crops for leaseholders.⁶²

South Africa's Black Sash provides a useful example of how paralegals may work hand-in-hand with lawyers. Paralegals of the Black Sash have worked with the Legal Resources Centre, for example, in identifying worthy public interest litigation matters and locating clients to form the basis of such legal challenges.⁶³

58 Mtshali interview 2012.

59 Mtshali interview 2012.

60 Mtshali interview 2012.

61 Legal Resources Centre's website 2013. www.lrc.org.za (accessed on 20 May 2013).

62 Golub 2000:311.

63 Black Sash 2013. www.blacksash.org.za (accessed on 20 February 2013).

Vawda stresses the role of paralegals within public interest law firms. He notes that, while public interest law firms are relatively few and small, they have played and will continue to play a vital role disproportionate to their size and number. He stresses the role of community-based paralegal advice offices in the work of such NGOs through screening legal problems and providing support to members of the community. However, he is of the view that paralegals' role in this regard would be improved through the recognition and formalisation of paralegal structures.⁶⁴

In July 1983, the role of paralegals formed part of the National Conference on Legal Aid in South Africa. The conference recognised the role of CBPs in providing legal assistance and advice to the indigent in rural areas where lawyers were not available.⁶⁵ It noted further that community-based paralegals provided virtually the only legal assistance for the indigent in those areas. At the 1998 National Legal Aid Forum, it was proposed that advice offices should be utilised as information providers and advice givers at the community level, and as a referral agency of clients to legal service providers for representation.⁶⁶

In 2007, there existed a cooperation agreement between Legal Aid South Africa and the National Community-Based Paralegal Association (NCBPA). This involved the law clinics providing backup legal services to approximately 750 paralegals in 250 advice offices situated mainly in the townships and rural areas not comprehensively covered by the formal legal aid system.⁶⁷ This has only been maintained by some law clinics, for example Rhodes University and North-West University.

Legal Aid South Africa employs paralegals in all its Justice Centres and satellite offices, as well as at Head Office where paralegals staff the Legal Aid Advice Phone-in Service under the supervision of a qualified lawyer.⁶⁸

It is evident that the impact of CBPs sometimes depends on support from other agencies, public interest law firms, law clinics, paralegal networks and governmental legal aid. That notwithstanding, when functioning relatively independently, CBPs make a vital impact on the provision of legal services to the poor.

64 Vawda 2005:246.

65 Maisel 2006:383.

66 McQuoid-Mason 2000:133.

67 Ramgobin 2004. The lack of clear data pertaining to paralegals and advice offices is shown by the 1998 National Legal Aid Forum estimating there to be 350 community advice offices in South Africa. McQuoid-Mason 2000:footnote 92.

68 Legal Aid South Africa "About us" (April 2014). <http://www.legal-aid.co.za/?p=16> (accessed on 25 April 2014).

4. Remuneration of CBPs

Paralegals in South Africa are usually paid, but often their remuneration is very low and, in some instances, they work as unpaid volunteers.⁶⁹ A definitive aspect of CBPs is that they are not working for profit. Provided that payment for the paralegals is received from an outside funder as opposed to from members of the public themselves; there is no problem from the perspective of them being a CBP.

CBPs are paid a minimum of approximately R1 000 per month.⁷⁰ Some of the more experienced CBPs, however, have the potential to earn approximately R4 000 and more per month.⁷¹ The amount that CBPs are paid, however, is often not based on the levels of experience or qualification they hold. Their remuneration is dependent on available funding from donors.⁷² The reason for this is that, as discussed earlier, the majority of the CBPs operate from or for NGOs. These organisations rely heavily on funding which mainly comes from overseas and other NGOs, and to a much lesser extent the South African Government.⁷³ The rationale for low income or volunteer nature of the work is that they wish “to achieve a broader goal of social and economic upliftment in their own local communities where they come from”.⁷⁴

The fact that CBPs are receiving little or no pay and that any pay is uncertain beyond the short term are worrying issues and could result in a decrease in the number of CBPs. The reason for this is that security of tenure and remuneration are two crucial principles in respect of job choice. For CBPs, neither can be guaranteed and, as a result, people might not, in the future, wish to be CBPs or they may leave the field in order to procure a more substantial and secure income. Due to the rapid depletion of funding from foreign countries, it is postulated that, if CBPs do not receive adequate remuneration for their services, paralegal advice offices will, in future, not be able to provide legal assistance to those in need. Should this happen, it would have detrimental consequences mainly for indigent people who form the majority of this country’s population and who rely heavily on the assistance they receive from CBPs.

Golub notes that, whereas the work of volunteer paralegals is generally less structured than that of employed paralegals, volunteer paralegals often have the advantage of also belonging to a community-based association. The work of the paralegal often has mutually beneficial results for both the paralegal advice office and the community-based association.⁷⁵ Clearly, the requisite training, discussed in this article, for employed paralegals

69 McQuoid Mason 2000:S111-142.

70 Mtshali interview 2012.

71 Mtshali interview 2012.

72 Mtshali interview 2012.

73 Mtshali interview 2012.

74 Mtshali interview 2012.

75 Golub 2000:303.

is equally important for volunteers, if not more so, insofar as there is no employment contract to fall back on.

5. Laws or other regulation of CBPs

As mentioned earlier, a previous draft (2000) of the *Legal Practice Bill* included paralegals as legal practitioners. As Osman-Hyder notes, the inclusion of paralegals in earlier drafts of the *Bill* raised considerable concern among attorneys and advocates. The concern, she opined, was due to the lack of a necessary formal qualification as well as insufficient regulation of the paralegal sector. On the other side of the coin, Osman-Hyder points out that paralegals consider themselves a key component in expanding legal services to indigent and rural communities. There have even been calls to allow paralegals to appear in particular legal fora, such as in CCMA applications.⁷⁶ It is submitted that every and any step which improves a person's right to legal assistance goes some way towards achieving what Goldstone J in *S v Radebe; S v Mbonani* describes as "the evolutionary process of broadening and extending the right to legal representation".⁷⁷ This judicial pronouncement aligns with Dugard's view that access to justice involves more than simply physical access to courts – it encapsulates the ability to be "effectively heard".⁷⁸

There is no legislation or regulatory bodies that govern CBPs, and as such there are no prescribed minimum standards or regulatory authority that enforces compliance. In theory, anyone can become and practise as a CBP, even without having successfully completed some kind of Paralegal Training Programme, as discussed earlier. However, the majority of the CBPs in KwaZulu-Natal would ultimately practise either at an advice office set up by the CLRDC, or could use this knowledge and skill to work in a state department such as the eThekweni Municipality, both of which require paralegal training.⁷⁹

Currently, community advice offices (CAOs) operate as NGOs with an elected management committee to oversee the governance and financial accountability of the organisation, in order to ensure compliance with the requirements of the *Non-Profit Organisations Act of 1997 (NPO)*. The advice office management committees consist of elected community members in that particular area, and may be viewed as a form of 'internal supervision'.⁸⁰ An advice office management committee member needs no formal qualification, but those falling under the CLRDC (in KwaZulu-Natal) must, upon joining, undergo a CLRDC committee training programme that normally runs over a weekend.⁸¹ This short programme educates

76 Osman-Hyder in De Klerk *et al.* 2006:26.

77 *S v Radebe; S v Mbonani* 1988 (1) SA 191 (T).

78 Dugard 2008:2.

79 Mtshali interview 2012.

80 Mtshali interview 2012.

81 Mtshali interview 2012.

committee members on their rights and responsibilities as committee members. Members also receive an overview of the running of NGOs, input on project proposals and project management, human rights and other basic legal education, income generation and financial management training, as well as community development and methods of dispute resolution.⁸² The apparent idea behind these committees is to enable them to operate independently of their 'host NGO' (for example, the CLRDC) in order to ensure the viability and long-term continuation of paralegal advice offices and other community development projects.

The *Legal Practice Bill* was regarded as an opportunity to give some formal and legislative recognition to paralegals and, indeed, prior to its closure, the National Community-based Paralegal Association (NCBPA) and its subsidiary, the National Paralegal Institute (NPI), were successful in getting community-based paralegals included in the provisions of the *Draft Legal Practice Bill* (2002) and the *Legal Services Charter* (2007).

However, a second draft of the *Legal Practice Bill* was tabled on 21 April 2010. The Department of Justice and Constitutional Development (DOJ & CD) has opted to exclude all paralegals encompassing commercial, state, academic and community-based paralegals, from the legislation. Instead, the DOJ & CD has committed itself to the establishment of a separate regulatory framework for paralegals and, in particular, the work of community-based paralegals in community advice offices.⁸³

The National Alliance for the Development of Community Advice Offices (NADCAO) has been requested to engage with the DOJ & CD, along with other stakeholders, to develop an appropriate regulatory framework for paralegals, in particular, community-based paralegals. NADCAO, along with National Task Team on Community-Based Paralegals (NTTCBP), was given the opportunity to make a joint submission to the South African Parliamentary Portfolio Committee on Justice and Constitutional Development on the *Legal Practice Bill*. This relates to the revised *Bill* wherein all categories of paralegals have been excluded.⁸⁴ This submission took the form of both written representations and an oral submission on 28 May 2013. In their submission, NADCAO and the NTTCBP stated that any discussions about the recognition of paralegals within the wider justice system must include the issue of the long-term sustainability of CAOs.⁸⁵ They called for the *Bill* to "ensure that CBPs are equitably and justifiably

82 Mtshali interview 2012.

83 The Department of Justice and Constitutional Development, Republic of South Africa 2013. www.justice.gov.za/ (accessed on 1 June 2014).

84 The latest draft of the *Legal Practice Bill* was open for comments in February 2013.

85 The National Alliance for the Development of Community Advice Offices and the National Task Team on Community-Based Paralegals 2013:2. For a similar sentiment, see the website of the National Alliance for the Development of Community Advice Offices 2013. <http://www.nadcao.org.za/regulations.html> (accessed on 5 February 2013).

included in the Bill or that sufficient minimum thresholds are contained in the Bill for their regulation and sustainability”.⁸⁶

As matters stand, there is effectively no legislation that governs CBPs or paralegals, in general. Unless changes in the *Bill* are forthcoming, it is clear that the *Legal Practice Bill* will not recognise paralegals. Instead, what will happen is that a separate piece of legislation will govern paralegals. This, as shown earlier, will have to take place through a combined effort of all the parties involved.

Despite the seeming lack of regulation or advances for the regulation of paralegals, NADCAO have facilitated the organisation of CAOs into 9 provincial associations. This serves as a precursor to the establishment of a National Community Advice Office Association (NCAOA) which, it is hoped, will, in future, sit as a body that regulates the affairs of the CAOs in South Africa, similar to that of the Law Society of South Africa that regulates the affairs of attorneys and the National Bar Council for advocates.⁸⁷

6. Lessons from other jurisdictions

6.1 As to the roles CBPs may play

China’s Qianxi County Rural Womens’ Legal Services Centre uses paralegals to give advice, mediate disputes, and provide education at rural markets and case referrals to lawyers. This organisation’s experience is that informal legal education may realistically improve legal awareness for disadvantaged populations; in addition, the relevant communities need direct help from paralegals to affirm their rights.⁸⁸ Such organisations also succeed in making the limited finances available to legal services and NGOs go further.

In the Philippines, the legal NGO, *Saligan*, works hand-in-hand with a large association of coconut farmers. In addition to conducting traditional legal work, *Saligan*’s lawyers provide a so-called ‘train the trainer’, whereby members of the association are taught how to teach core legal information to their fellow members. A positive spin-off of this relationship is improved land tenure as part of a greater land-reform process.⁸⁹ Golub argues that the *Saligan* example highlights a number of factors to consider with respect to the development of paralegals. These include the need for training to be specific to the situation; the organisation of the paralegals from the perspective of forming part of the community in which they are working is a significant factor in their success, and the ongoing support of qualified lawyers enables the paralegals to perform the work. He concludes

86 The National Alliance for the Development of Community Advice Offices and the National Task Team on Community-Based Paralegals 2013:12.

87 National Alliance for the Development of Community Advice Offices 2013.

88 Golub 2000:302.

89 Golub 2000:304.

that the term 'ongoing paralegal development' may be more apposite than 'paralegal training'.

More generally in the Philippines, it has been noted that legal assistance is often provided by NGOs and alternative dispute resolution at a village level through the so-called *Barangay* system.⁹⁰ It is submitted that paralegals have a core role to play in each of the last mentioned access to justice mechanisms.

Paralegals may be used to mobilise communities in order to exert pressure on state agencies to implement legal change. Examples of this are the *Banchete Shekha* group in Bangladesh and the Chilean NGO *FORJA*. The latter, for example, in response to commercial dredging causing flooding, were able to use community mobilisation to persuade local bureaucrats to address the problem.⁹¹

An Indian paralegal NGO, *Hengasara Hakkina Sangha (HHS)*, seeks to change the negative attitudes towards so-called untouchables (now more commonly and politically correctly called 'dalits') and women. *HHS* facilitates this change by running workshops for community members and NGO personnel. A consequence of this training has been the assertion of more equal domestic relationships (with decreased domestic violence) and the setting of subminimum salaries in the agricultural sector.⁹² An interesting aspect of the success has been the entry points into discussions such as family planning or livelihoods; this will lead to addressing more controversial legal issues.⁹³

An interesting variation on traditional advice offices is Singapore's 'multi-door courthouse' where a centre at the courts funded by the state provides a comprehensive service (run by CBPs) for administrative and educational matters.⁹⁴

In Sierra Leone, the vast majority of the population does not have access to the formal legal system.⁹⁵ Many of these rural communities have to rely on informal traditional institutions which often leave them vulnerable to exploitation and discrimination.⁹⁶ Consequently, they have introduced 'a low-cost justice delivery model of CBPs', with government support, to ensure widespread access to justice for the poor by relying heavily on the help of NGOs staffed by CBPs.⁹⁷ For example, *TIMAP for Justice* is a local NGO that has, since 2004, provided grass-roots justice services in the

90 Medina 2001:1.

91 Golub 2000:308.

92 Heise, Pitanguy & Germaine 1994:12.

93 Heise, Pitanguy & Germaine 1994:12.

94 McQuoid-Mason 2005:231.

95 The Commission on Legal Empowerment of the Poor 2008:19.

96 The Commission on Legal Empowerment of the Poor 2008:19.

97 Government of Sierra Leone Justice Sector Reform Strategy and Investment Plan 2008-2010. www.carl-sl.org/.../469-expanding-grassroot-justice-services-in-sierraleone (accessed on 25 February 2013).

Northern and Southern provinces of Sierra Leone. It employs CBPs who are actively engaged in mediation, advocacy, community organisation, and education in the local communities and who are supervised by two attorneys who engage in litigation and 'higher level advocacy' when dealing with more complex cases and where the CBPs cannot solve specific problems on their own.⁹⁸ As a result of their success, *TIMAP* is now recognised by the World Bank and by the International Crisis Group, and the government of Sierra Leone has partnered with *TIMAP* and broader civil society to make CBPs more widely available.⁹⁹ However, despite their success and long period of existence in the country, NGOs have made hardly any or no effort to attempt to "harmonise, standardise or obtain formal legislative recognition of CBPs".¹⁰⁰ However, the *Justice Sector Reform Strategy Plan, 2008-2010* was specially created by the State to recognise and help support the idea of providing poverty alleviation and access to justice for all by means of the establishment of CBPs through *TIMAP*.¹⁰¹

Although primarily focusing on criminal law cases, the Malawi Paralegal Advisory Service Institute (PASI) has provided a blueprint for paralegal services in much of East and West Africa. PASI was established in Malawi in May 2000 as a partnership of Penal Reform International (PRI) with four Malawian NGOs, initially to provide legal help to clients awaiting trial in detention and to defend their legal and constitutional rights.¹⁰² The PASI intervention is currently a nationwide programme, deploying qualified CBPs to provide legal education, advice and assistance throughout the criminal justice process, to complement and facilitate the work of lawyers. Some of the main services, tasks and activities that are offered include the Village Mediation Programme,¹⁰³ Pre-Trial Detention Audit,¹⁰⁴ and Meetings and Camp Courts.¹⁰⁵

The systems developed in China, India, Singapore, Sierra Leone, Bangladesh, Chile, Malawi and the Phillipines indicate how lack of resources need not be the final word on accessible paralegal services. Furthermore,

98 United Nations Development Programme 2009. hdr.undp.org/en/media/HDR_2009_EN_Summary.pdf (accessed on 25 February 2013).

99 Government of Sierra Leone Justice Sector Reform Strategy and Investment Plan 2008-2010:6.

100 Conteh 2010. www.carl-sl.org (accessed on 20 March 2013).

101 Government of Sierra Leone Justice Sector Reform Strategy and Investment Plan 2008-2010:7.

102 (Malawi) Paralegal Advisory Service Institute. <http://www.pasimalawi.org/> (accessed on 30 July 2014).

103 This focuses on dispute resolution at a community level, with a positive impact on the ability of rural poor and vulnerable groups, including women and children, to access justice in civil disputes and petty crimes.

104 In this instance, PASI and local partners collect data from the courts, police, prison service and the Ministry of Justice on both the legal status of awaiting trial prisoners and issues relating to conditions in detention in the country.

105 PASI facilitates an approach whereby CBPs convene case coordination meetings at a local level which offer solutions to certain problems with the aim of achieving effective and efficient case-flow management.

these examples show that innovation with regard to scope, training, and focus can galvanise CBPs to provide effective and accessible services.

6.2 As to the recognition and regulation of CBPs

South Africa would not be the first country to provide formal recognition and regulation of CBPs. For example, the legal aid law in Sierra Leone, adopted in May 2012, specifically makes provision for CBPs to complement the provision of legal aid.¹⁰⁶ In Malawi, the Law Commission created formal recognition of CBPs in their relatively new *Legal Aid Act*.¹⁰⁷ The Zimbabwean Labour court has even gone so far as to give paralegals the right to appear in that tribunal.¹⁰⁸

On a regional level, on 26 July 2012, fifty organisations working to advance justice in twenty African countries drafted the *Kampala Declaration* calling on governments to recognise the role CBPs play.¹⁰⁹

7. Arguments for and against the formal recognition and statutory regulation of CBPs in South Africa

7.1 Arguments for

The arguments in favour of formal recognition and statutory regulation of CBPs in South Africa include the following: it is a low- or no-cost alternative to other legal services; it is more accessible than other legal services; CBPs provide unique services; the importance of raising communitywide legal awareness, and the potential for community upliftment. These will be discussed below.

7.1.1 Low-/no-cost alternative

According to Mtshali, CBPs are trained to have basic knowledge of the legal system and its laws, and since they offer free basic legal advice and services to community members in mainly rural areas, they do not prevent these people from getting help or assistance with their problems by charging high fees which many of them would otherwise simply not be able to afford.¹¹⁰ In other words, “they provide a cost-effective supplement to expensive legal talent”.¹¹¹ This is mainly due to the fact that entry-level

106 The National Alliance for the Development of Community Advice Offices and the National Task Team on Community-Based Paralegals 2013:9.

107 The National Alliance for the Development of Community Advice Offices and the National Task Team on Community-Based Paralegals 2013:9.

108 The National Alliance for the Development of Community Advice Offices and the National Task Team on Community-Based Paralegals 2013:9.

109 Kampala Declaration on Community Paralegals 2012. <http://www.namati.org/news/newsfeed/kampala-declaration/> (accessed on 27 May 2013).

110 Mtshali interview 2012.

111 Golub 2000:298.

barriers to becoming a CBP remain low and any layperson can undergo a relatively inexpensive “non-law school” paralegal training programme which may also be sponsored by an NGO.¹¹² Furthermore, CBPs work and operate indirectly within the broader legal aid delivery system in South Africa and, consequently, CBPs are not motivated to work with a profit-making objective, but rather their focus is to provide a form of community service and to increase access to social justice for those marginalised and underprivileged areas.¹¹³

7.1.2 More accessible

Mtshali explains that many of the trainee CBPs ultimately practise in the very communities from which they come, in order to address the specific issues or problems their communities face.¹¹⁴ Furthermore, CBPs often have knowledge of the socio-economic situation of the community they serve and its local forms of justice and community acceptance better than an external lawyer would, as well as being able to speak the local language and understand the local customary laws, culture and practices.¹¹⁵ Accordingly, they are able to engage, interact and communicate with members on a more personal level and provide legal solutions and advice that may specifically address the community’s needs and issues.

7.1.3 Unique services

Although they may not be as highly specialised and skilled as an attorney in some ways, CBPs offer other unique skills and professional characteristics that enhance efforts to improve justice for the poor by incorporating an array of skill sets from different professions such as a social worker, mediator, negotiator, educator, translator and administrator, and which may all be suited and adapted according to the specific needs of the community.¹¹⁶ Nonetheless, it must be stressed that CBPs should not be viewed as a substitute for traditional legal practitioners, but rather as complementary to them.¹¹⁷ Consequently, CBPs will often try to resolve problems without going to court, and would rather attempt to solve such problems through administrative processes, alternative dispute-resolution mechanisms such as mediation, arbitration and negotiation, as well as community action.¹¹⁸

Few, if any, commercial law firms offer basic services such as assistance in claiming UIF, COIDA or dependents’ benefits from the state, particularly when these communities remain uneducated and illiterate and have a high

112 Golub 2000:297.

113 McQuoid-Mason 2005:218.

114 Mtshali interview 2012.

115 Open Society Justice Initiative 2010:12.

116 Open Society Justice Initiative 2010:18.

117 Open Society Justice Initiative 2010:18.

118 Golub 2000:298.

prevalence of HIV and AIDS.¹¹⁹ Many community members need to be educated about, and made aware of social welfare services in order to uplift their socio-economic situation. Many attorneys and advocates who only operate in the urban areas do not provide these services at all, let alone gratuitously. CBPs may play a role in filling these gaps.

According to Mtshali, CBPs also work closely with traditional leaders in communities in promoting the rule of law, so that traditional leaders may perform and govern better and understand the concepts of human rights and other law, gender rights and conflict resolution when they are governing their communities. Furthermore, CBPs try to promote a gender-sensitive culture in these rural communities which are often isolated from the rest of the country and which are traditionally male dominated. There is an effort to harmonise long-established customary laws and practices with the constitutional era, thus also ensuring that all community members enjoy equal rights and respect for human dignity, as enshrined in our Constitution.¹²⁰

7.1.4 Raising community wide awareness

Mtshali explains that CBPs are also actively engaged with the community in trying to introduce and familiarise its members, in a culturally sensitive manner, with the formal legal system and its laws in instances where customary laws and traditional rules are often practised instead.¹²¹ In other words, CBPs are able to help communities and their members become more legally self-sufficient, by raising awareness of the rights that are due to them where they may previously have been ignorant about them, as well as helping them think critically about the law and raise concerns about inequitable aspects of the law.¹²² Furthermore, by creating widespread legal awareness and teaching strategies such as 'community organising', this helps disadvantaged and fragmented communities become more cohesive and active in addressing the legal and social problems that affect their members.¹²³

Mtshali describes CBPs' focus on HIV and AIDS rights awareness and education campaigns, particularly relating to protection of victims of discrimination. They also help educate *Amakhosi* (traditional leaders) to understand some legal and other concepts to enable them to provide effective leadership and decision-making in governing their communities. For example, the CLRDC organised a series of workshops, run by CBPs and held between March and September 2000, which were attended by *Amakhosi* from all over KwaZulu-Natal. They were educated on basic court procedures at Magistrates' and Tribal Courts, and participated in open,

119 Golub 2000:note 83.

120 Mtshali interview 2012.

121 Mtshali interview 2012.

122 Golub 2000:298.

123 Golub 2000:298.

lively discussions where they shared practical problems they faced in their respective communities.¹²⁴

7.1.5 Community upliftment

According to Mtshali, CBPs are actively involved in promoting long-term socio-economic community upliftment, by fostering an environment that is conducive to the practice and respect of human rights, thus allowing community members to recognise when their rights are violated and what steps to take to obtain redress.¹²⁵ They are also involved in the development of awareness and practice of the rule of law and justice, democracy and good governance – including education on new legislation and government policies as well as how to voice their opinions and participate in legislative formulation.¹²⁶ In other words, communities are able to mobilise their members and attempt to make actual changes in the laws and regulations that govern them.¹²⁷

7.2 Arguments against

One could argue that, because CBPs are only trained in basic theoretical legal knowledge (albeit that skills and expertise are gained over time), the poor they serve may at times obtain service that is inferior to that provided by a legal practitioner.¹²⁸ However, one could counter that argument by indicating that some legal assistance (by qualified paralegals) is surely preferable to none whatsoever; this is often the case in the absence of assistance from a paralegal. Perhaps a greater concern is the current lack of a regulatory framework to control all aspects of CBPs' work. However, as indicated earlier, requiring high-level accreditation or qualifications, or making formal recognition conditional on accreditation may stifle the current provision of services by CBPs, particularly if they are not provided with the opportunity or funding to obtain the necessary qualifications, accreditation or training.

8. Recommendations

There should be legislative recognition and regulation of CBPs. However, there needs to be more engagement with stakeholders, in particular paralegals themselves, in this process in order to ensure that the final outcome is workable, particularly in the differing contexts in which paralegals work, their diverse roles and the need for their services to remain

124 Mtshali interview 2012.

125 Mtshali interview 2012.

126 Mtshali interview 2012.

127 For further ideas on the possible future roles of CBPs, see McQuoid-Mason in Carnelley & Hoctor 2011:169-205.

128 Golub 2000:297.

accessible. Paralegals are most effective when working cooperatively with lawyers.¹²⁹ Paralegal advice offices may be used to complement traditional legal aid schemes.¹³⁰ Thus, everything possible should be done to promote a good working relationship between paralegals and lawyers in the traditional sphere. A good example of this is the Rhodes University Law Clinic and its Advice Office Project. In terms of this project, the work of paralegals is supervised by qualified attorneys and, when the legal issue is beyond the skills of the paralegal, there is a referral to attorneys at the Law Clinic to take over the matter (for example, to appear in court).¹³¹ The paralegal's role should not end with the so-called 'referral' – typically, the paralegal remains the intermediary between the client and the attorney. McQuoid-Mason considers paralegal advice offices a useful addition to traditional lawyer-based legal aid service provision. He stresses the role of paralegals as the first port of call for many making use of the legal system. Paralegals may screen initial clients and refer only potential litigants to lawyer-based partners. McQuoid-Mason stresses the need for proper payment of, and training for paralegals so that the system can function properly.¹³²

Golub argues that law-related assistance schemes should take cognisance of non-lawyers (in this instance, paralegals) and non-judicial routes (for example, a settlement mediated by a paralegal).¹³³ Similarly, paralegals may use legal avenues to achieve their objectives.

McQuoid-Mason makes a number of proposals applicable to the operations of paralegal advice offices. First, he argues for existing infrastructure of advice offices to be built upon. Secondly, he supports the idea of empowering advice offices by incorporating paralegals and law-related education trainers to provide legal education. Thirdly, advice offices should be empowered by including lawyers and candidate attorneys in these offices. Fourthly, alternative dispute resolution should be promoted as an alternative to litigation. Fifthly, preliminary matters involving representation should be dealt with. Once all of the above have been exhausted, a client may be referred to a law clinic, justice centre or private attorneys acting *pro bono* as the case may be. He mentions the Community Law and Rural Development Centre (CLRDC) as a good example of an organisation centred upon establishing paralegal advice offices in rural areas.¹³⁴

As to legal education by CBPs, Golub astutely points out that dissemination of legal knowledge involves not simply the content, but

129 Golub 2000:299. Notwithstanding this point, McQuoid-Mason (2005:231) notes that some paralegals act independently of lawyers.

130 McQuoid-Mason 2005:232.

131 Rhodes University Law Clinic 2012. <http://www.ru.ac.za/law/lawclinic/> (accessed on 21 May 2013).

132 McQuoid-Mason 2000:paragraph 135.

133 Golub 2000:312.

134 McQuoid-Mason 2000:paragraph 134.

also the method in which that content is delivered.¹³⁵ As to the medium of training, paralegals are well placed to use interactive training methodologies appropriate to the community in which the training is being offered.

The Black Sash indicates some of the challenges that citizens face when coming up against agents of the state: “[M]any of our clients are illiterate and intimidated by officialdom. They have little or no access to telephones. In spite of this they have usually tried many avenues to resolve their problems before coming to a Sash Advice Office”.¹³⁶

In response thereto, the Black Sash and similar NGOs have engaged the services of CBPs. Among other functions, these paralegals act as conduits between the client and a government agency such as in the case of social grants applications.¹³⁷

As to legislative and policy proposals, it is submitted that it is mainly funding and a genuine interest in CBPs on the part of government that remain the biggest obstacles and challenges in opening, running and maintaining CAOs countrywide.

The following are proposed regarding the new separate legislation to govern CBPs:

- That ‘community-based paralegals’ be recognised and defined separately in the definitions section of relevant legislation to other ‘paralegals’ who may work in commercial law firms. This will give CBPs and paralegals, in general, a unique, separate independent status to that of attorneys and advocates.
- That the type of work that CBPs do be clearly defined and separated from the work that an attorney or advocate might do. For example, certain work may be reserved only for attorneys such as charging clients fees, initiating litigation, signing pleadings or appearing in court in a representative capacity. In addition, heavy penalties could be applicable if CBPs are in breach of these rules.
- That the already SAQA-accredited paralegal training programmes continue to enjoy this recognition and that a greater number of tertiary institutions begin to offer such programmes.

The worldwide funding crises have affected not only NGOs providing vital basic services, but also paralegal service provision. Black Sash, for instance, has had to close three of its advice offices (Knysna, Pietermaritzburg and Grahamstown) in February 2012, in a process of consolidation after funding cuts from long-standing donors who are moving their strategic focus away from South Africa.¹³⁸ CBPs’ role in lessening

135 McQuoid-Mason 2000:paragraph 134.

136 Quoted in Golub 2000:301.

137 Such functions may include assisting clients obtain domestic violence protection orders or claiming outstanding maintenance on behalf of a client’s child.

138 Black Sash 2012. <http://www.blacksash.org.za/index.php/media-and-publications/media-statements/1078-sash-to-consolidate-its-provincial-operations-black-sash-25-january-2012> (accessed on 26 May 2013).

the court burden and its impact on making legal services accessible to the poorest cannot be gainsaid. In order to realise access to justice for all people in South Africa, in particular the indigent, the recognition and regulation of paralegals is non-negotiable. It is hoped that such recognition and regulation will also provide much-needed financial and other resources to ensure that CBPs continue to provide free legal assistance.

Over-regulation could stifle any profession. However, considering the current lack of recognition, legislative approval and regulation is likely to provide the impetus for further expansion and development of existing paralegal programmes. In this way, CBPs will continue to play a vital role in their communities and strengthen other legal services provided by government and NGOs.

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