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## South Africa

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### Law & policies

The South African Constitution of 1996 guarantees a right to access courts and to legal assistance at state expense where “substantial injustice would otherwise result.”<sup>1</sup> Regrettably, the provision of legal assistance in this context relates only to services provided by lawyers. Section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. Furthermore, S 35(3)(g), (o) states that every accused person has a right to a fair trial, which includes the right ... (g) to have a legal practitioner assigned to the accused person by the state and at state expense if substantial injustice would otherwise result, and to be informed of this right promptly; and (o) right of appeal to, or review by, a higher court.

In addition, the long title to the Legal Aid South Africa Act 39 of 2014 requires the provision of access to justice and the realisation of the right of a person to have legal representation as envisaged in the Constitution and to render or make legal aid and legal advice available. It is guided by the objectives under section 3 that require to ; (a) render or make available legal aid and legal advice; (b) provide legal representation to persons at state expense; and (c) provide education and information concerning legal rights and obligations, as envisaged in the Constitution and this Act. As such, access to court is one of the objectives. It may be argued that where one obtains advice leading to a legal conclusion is taken as legal aid. In addition, section 34(9) of the Legal Practice Act<sup>2</sup> mandates the South African Legal Practice Council to investigate and make recommendations to the Minister of Justice on the “statutory recognition of paralegals” within two years of the commencement of this Act. In its deliberations, the Council is required to be guided by best international practices, public interest and the interests of the legal profession. Nonetheless, paralegals remain formally unrecognized today.<sup>3</sup>

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<sup>1</sup> Sections 35(2)(c) and 35(3)(g) <<https://www.gov.za/documents/constitution/chapter-2-bill-rights#35>> accessed 11 June 2023.

<sup>2</sup> No. 28 of 2014 <<https://www.justice.gov.za/legislation/acts/2014-028.pdf>> accessed 11 May 2023.

<sup>3</sup> David Mcquoid-Mason places the opposition to formal recognition of paralegals squarely in the hands of the private bar. See Vivek Maru & Varun Gauri (n. 16), p. 20

### **The ratio of lawyers to paralegals**

As of January 2022, South Africa had 29,981 practising attorneys and 5,483 candidate attorneys.<sup>4</sup> Although the Association of Community-Based Advice Offices of South Africa (ACAOSA) is the umbrella association of all community-based advice centres, it does not have official numbers for all paralegals in South Africa,

### **Sources of funding**

As in most countries covered by this mapping exercise, paralegal work is funded almost entirely by donors.

### **Legal recognition**

Neither the Constitution nor the Legal Aid South Africa Act<sup>5</sup> recognizes paralegals. The effort of paralegal organizations such as the National Alliance for the Development of Community Advice Offices (NADCAO). This organisation has since changed its name to Community Advice Officers of South Africa (CAOSA). It has yielded the reference in the Legal Practice Act to “paralegals”. but as we indicated in section 3.8.1 above, the legal recognition of paralegals is still a work in progress.

### **Challenges of paralegals**

Paralegals in South Africa confront several challenges. However, we highlight the three most intractable – legal recognition/regulation, limited funding and inadequate training. The last two are directly related to recognition. With formal recognition, paralegals can expect to attract more resources for training and deployment to communities where their services are required.

### **Opportunities for collaboration**

Section 34(9) of the Legal Practice Act provides an opportunity for paralegal organizations to work with the Legal Practice Council and the Law Society of South Africa to address some of the concerns lawyers have with formally recognizing paralegals. This could provide added impetus for the Council to make the appropriate recommendation on the recognition of paralegals. In addition, the paralegal movement in South Africa might wish to exchange with

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<sup>4</sup> See Law Society of South Africa website <<https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/>> accessed 19 May 2023.

<sup>5</sup> No. 39 of 2014 <[https://www.gov.za/sites/default/files/gcis\\_document/201412/383159-12act39of2014legalaidsact2014a.pdf](https://www.gov.za/sites/default/files/gcis_document/201412/383159-12act39of2014legalaidsact2014a.pdf)>

their counterparts from Malawi who still struggle with legal recognition but have achieved fairly decent community acceptance.

### **Recommendations**

The first recommendation flows from the opportunity identified above. The paralegal community should engage in the process of providing a sound basis for the recommendation by the Legal Practice Council of legal recognition of paralegals in South Africa and with that, access to some public funding for their activities, including training, regulation and oversight.