



## **Justice for Breakfast: Community Paralegals in South Africa**

**13 February 2013**

### **Outcome Report**

*The Wits Justice Project and the Graduate School for Public and Development Management's Crime, Policing and Criminal Justice Programme recently convened a roundtable discussion on community paralegals. Attendees included stakeholders from all parts of the civil and criminal justice spectrum. The notes below summarise the primary discussion points of this important debate.*

#### **What is a paralegal in South Africa?**

Participants all agreed that in South Africa, the paralegal landscape is undefined and the definition of a paralegal is broad, compared to other countries. South Africa has a varied practitioner group that all identify themselves as paralegals – whether this is helpful or not remains unresolved. Indeed, some felt that too strict a definition of a community paralegal would exclude people who might not have a qualification, but are doing invaluable work in communities

Definitions from participants included viewing paralegals as being an interface (between the criminal justice system and the community); mediators and community advice officers. The consensus, however, was that community paralegals should be embedded in their communities – and some advocated the paralegal profession should become a permanent community fixture, directed at building community resilience and promoting the constitutional right to justice.

#### **How should community paralegals be funded?**

The issue of costing paralegals is crucial and challenging, due to the complex operating environment. There was a suggestion that community paralegals could mirror the Red Cross volunteer system. However, most participants felt that for the community paralegal profession to be sustainable, it

needed to be funded and salaried. Some participants pointed to people leaving after training, if they did not receive a wage; and a very low staff turnover for organisations with salaried paralegals.

NADCAO explained how their funding model linked community paralegals with corporate law firms, which provided a measure of sustainable funding.

Indiba-Africa explained that they were developing a counter-factual argument for paralegals. This means assessing all the funds currently spent on paralegal advice, then asking: – if these funds were removed, what would the impact on clients be?

In terms of reporting or assessing the current impact of paralegals, it was pointed out that many paralegals are so busy working, that they have no time for administrative tasks including logging and reporting. This affects organisations' ability to ask for donor or government funds (as they require stringent reporting).

The problem with regulating and costing paralegals, is that once you develop of cost model for the profession, there must be very strict criteria for assessing and accepting people into the profession: this means qualifications. The difficulty here is that many people who are currently very good paralegals would be excluded, as they do not meet the education criteria; and often do not want to formalize their knowledge. This could be addressed with a Recognition of Prior Learning approach.

### **Some community paralegal models and methods of engagement**

Organisations explained their involvement in community paralegal projects:

#### *NADCAO*

The KwaZulu-Natal office reported having community paralegals based in police stations which reportedly encourages perpetrators to 'fear' paralegal authority, and increases rates of perpetrator participation in mediation. Their duties vary from helping the community with legal issues and acting as mediators in matters where the law cannot offer people an appropriate remedy (including cases of domestic violence, or where a victim doesn't want to press charges). Community paralegals have been used, in this context, as catalysts for restorative justice, especially in disputes among family members and neighbours.

#### *Legal Aid Board (LAB) South Africa*

The Legal Aid Board initially employed paralegals at their offices; however, with a low demand, these paralegals were sent out into the community, where demand has now increased. There was a view that paralegals should be part of the municipal service offering or part of an MP's (constituency) office. The LAB thinks that paralegals could fill a big mediation gap, but the challenge is getting clients to agree to mediation: if they qualify for a lawyer, only 5-10% will opt for mediation.

### *Department of Justice and Constitutional Development (DOJCD)*

The DOJCD uses court clerks and assistant registrars to assist people filling in forms and other administrative assistance at courts, for free. Recognising the potential impact of paralegals, however, they have undertaken an internal pilot project, taking current staff and giving them paralegal training (100 learners), and will conduct an impact study thereafter.

### *The Social Change Assistance Trust*

SCAT currently funds 230 advice officers in the rural Capes. These paralegals attend a tailor-made course. The Bathurst Advice Office is an example of the value of a strong organisation in a rural community. Based in the small township of Nolukhanyo (Eastern Cape), the LDA serves the community of Bathurst. It provides a paralegal service and generally responds to more than 400 cases in a year.

### *Khulisa*

Khulisa has estimated the savings from using community paralegals in one court: a second magistrate post was removed from the budget due to the impact of paralegal interventions on court rolls. However, paperwork, filing and follow-up must be stringent if matters are taken off the court roll.

## **Community paralegal training and education**

The University of KwaZulu-Natal has a paralegal diploma programme. Other opportunities to earn a paralegal certificate through a designated College exist. However, these are all costly and therefore, not the most accessible methods of training community paralegals. Black Sash produces a paralegal manual, annually updated and distributed, as an aid to practicing paralegals.

The other problem with current training is that it is not always geared towards *community* paralegals. Many participants questioned where government could play a role in providing reasonably-priced training, designed for a community paralegal. It was explained that current training is developed through a SETA, but there was a consensus that government could do more, especially when the sector is heavily reliant on foreign donors.

## **Paralegals and accountability**

The pressing issue of accountability was raised. The questions that were repeatedly asked were:

- How can I trust a paralegal to give me reliable advice?
- How are we to keep paralegals accountable to the advice they give communities?
- Where do I go to complain?

All this would be addressed by formalizing and institutionalizing paralegals. However, regulation is a problem because there are different types of paralegals. Also – how does one regulate an industry where there is a wide spectrum of candidates: those with qualifications, and those without – who are still excellent paralegals? The fact that there is currently no clear line between information and advice is a challenge.

### **Paralegals versus lawyers – an uneasy alliance?**

The concern of the Law Society was that paralegals would ‘become’ attorneys very quickly: the concern was that inexperienced people would be giving incorrect advice. It was agreed that if there were adequate regulation, lawyers and paralegals could work well together.

### **In conclusion**

The Foundation for Human Rights (FHR) raised the issue that we do not know who is doing what, and where – despite a large amount of data within organizations. An important way forward would be to collate and analyse the current data, to best evaluate the paralegal landscape: successes, challenges and opportunities for funding, regulation and institutionalisation.

A further important conclusion reached was that the deployment of community paralegals could have a significant financial impact on the criminal justice system, through savings associated with reducing heavily-loaded court rolls; improving the granting of bail, where appropriate; and providing an avenue for alternative dispute resolution and mediation.

It was generally agreed that the community paralegal profession in South Africa has a long and noble history and that the profession is very resilient. Community paralegals can play an important part in ensuring access to justice for all.