

The feasibility of fee free practical vocational training in South Africa: Prospects and challenges

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1 Introduction

In South Africa, Practical Vocational Training (PVT) is one of the requirements for admission as a legal practitioner. Practical Vocational Training includes serving under a PVT contract (articles of clerkship) and completing a programme of structured course work from Practical Vocational Training Centres, commonly known as law school.¹ There are ten training centres that are offering Practical Vocational Training throughout South Africa.² All these training centres are private in nature. This means that the organizations are owned and operated independently from the government, such that they are not controlled by a public entity and are usually funded by sources like individual donations, tuition fees, or private investments, rather than by public funds; essentially, the centres are not part of the state or ran by the government.³ It must be

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- 1 Legal Education & Development 'Compulsory practical vocational training for candidate legal practitioners' <https://www.lssalead.org.za/course-candidate-legal-practitioners/compulsory-practical-vocational-training/> (accessed 21 November 2024).
 - 2 Legal Education & Development 'Practical vocational training school for legal practice' <https://www.lssalead.org.za/course/attendance-school-for-legal-practice/> (accessed 21 November 2024).
 - 3 C Makate 'Effective scaling of climate smart agriculture innovations in African smallholder agriculture: A review of approaches, policy and centres strategy needs' (2019) *Science Direct*.

established that all these centres that offer PVT are accredited by Legal Education and Development (LEAD) which is a division of the Law Society of South Africa (LSSA). Simply put, the PVT program offered through LEAD is recognized and approved by the LSSA for legal practice training.⁴

The private nature of PVT centres has prejudiced law graduates who wish to pursue the traditional legal route of being attorneys and advocates and wish to attend law school, as they ought to bear all the financial cost. This is because the government funding that majority of unprivileged law graduates use such as the National Student Financial Aid Scheme (NSFAS) only covers their undergraduate tuition fees and does not cover any post-graduation fees, including Practical Vocational Training. This financial burden imposed by PVT tuition has prejudiced a number of law graduates who wished to pursue the traditional legal routes of being admitted as legal practitioners and ultimately practice as such.⁵

The accreditation is authorised by the Legal Practice Act,⁶ particularly section 6(5)(g). The provision of this section stipulates that

the Council, with regard to education in law and legal practice generally may accredit training centres that offer practical vocational training courses which contribute towards the qualification of legal practitioners and candidate legal practitioners.

This denotes that flowing from the provisions of this section, no centres offering PVT may function without the relevant accreditation by the Legal Practice Council (LPC). This study demonstrate how this is controversial considering that all these centres and bodies are indirectly infringing on the Constitution of the Republic of South Africa, 1996. This infringement is unjustifiable in terms of section 9(3) of the Constitution. This is because this infringement is based on one of those grounds listed in section 9(3) of the Constitution, being social origin. This is supported by the view of the court in the case of *Qwelane*

4 Law Society of South Africa 'Becoming a legal practitioner' <https://www.lssa.org.za/about-us/about-the-attorneys-profession/becoming-a-legal-practitioner/#:~:text=Practice%20management%20training,to%20comply%20with%20the%20requirement> (accessed 22 November 2024).

5 M Slabbert, 'The requirement of being a "fit and proper" person for the legal profession' (2011) *SciELOSA*.

6 Act 28 of 2014.

v South African Human Rights Commission and Another where the court submitted that:

Based on this, unfair discrimination is the linchpin of inequality. It is for this reason that section 9(3) of the Constitution expressly proscribes unfair discrimination on specified grounds.⁷

Furthermore, the case of *King v De Jager* also supported this view of unfair discrimination when it was held that:

if an infringement is based on the grounds listed in section 9(3) of the South African Constitution, it is considered unjustified discrimination and therefore unlawful; this case involved a clause in a will unfairly discriminating against beneficiaries based on gender.⁸

The concept of social origin is defined as a person's social background or class into which they were born, including factors like their family's socioeconomic status, occupation, education level, and cultural norms, essentially shaping their early life experiences and influencing their opportunities throughout life. It is considered a starting point in society, distinct from one's current socioeconomic status which can change over time.⁹ As a result, in light of this definition it can be established that due to the legacy of apartheid, the majority of people in South Africa with purely African ancestry still fall within the poorest social class, which often translates to them earning below the minimum wages.¹⁰ Subsequently, this means that they cannot afford to pay the PVT fees. This therefore infringes on their right to education as enshrined in section 29 of the Constitution. Further assertions on this infringement are discussed subsequently.

2 The nature of PVT programs

The Practical Vocational Training (PVT) centres are established by the Law Society of South Africa (LSSA) and are managed through its

7 *Qwelane v South African Human Rights Commission and Another* (CCT 13/20) [2021] ZACC 22; 2021 (6) SA 579 (CC); 2022 (2) BCLR 129 (CC) (31 July 2021).

8 *King N.O. and Others v De Jager and Others* (CCT 315/18) [2021] ZACC 4; 2021 (5) BCLR 449 (CC); 2021 (4) SA 1 (CC) (19 February 2021).

9 Parliamentary Assembly 'Tackling discrimination based on social origin' (2022) Council of Europe.

10 D Francis & E Webster, 'Poverty and inequality in South Africa: Critical reflections' (2019) *Development Southern Africa*.

Legal Education and Development division (LEAD). They provides a postgraduate vocational training course for law graduates which is registered by the South African Qualifications Authority (SAQA) a statutory body regulated in terms of the National Qualifications Framework Act¹¹ and accredited by the Legal Practice Council (LPC).

The LSSA's PVT schools have ten centres throughout the country. These are situated in Bloemfontein, Cape Town, Durban, East London, Johannesburg, Polokwane, Port Elizabeth, Potchefstroom, Pretoria and Venda. The PVT program runs for a minimum of four-month with compulsory attendance either during the day or at night depending on the program offering. In addition, the LSSA offers a distance PVT program in conjunction with the University of South Africa (UNISA) which programme runs for a minimum of five months.¹²

Law graduates who successfully complete the training qualify to reduce their articles of clerkship contract period by 12-months following the agreement with their respective principals. Over and above, those graduates also qualify to sit for board examination which is also one of the requirements to be admitted as a legal practitioner. Those who want to be admitted and practice as advocates only require a 12-month PVT contract, and no reduction is applicable.¹³

A limited number of admission spaces are available at each training centre, and applicants go through a selection process before being accepted. At most, a centre may accommodate between twenty and fifty graduates at a time.

2.1 The Legal Practice Act 2014

The Regulations under section 109(1)(a) of the Legal Practice Act,¹⁴ refer to a set of rules established by the Minister of Justice in South Africa. These rules outline the specific requirements for PVT that a graduate must complete before becoming a legal practitioner. These include

11 Act 67 of 2008.

12 Legal Education and Development (n 2).

13 Law Society of South Africa (n 4).

14 Act 28 of 2014.

details such as the duration of training,¹⁵ the necessary coursework,¹⁶ and the supervision needed to qualify for admission to the legal profession.

For the purpose of this study, due regard will be given to two regulations, which articulate the difference between the two types of PVT programs. The former program being authorised by Regulation 6(1)(a), while the latter program is authorised by Regulation 6(1)(b).

Regulation 6(1)(a) provides that:

Any person intending to be admitted and enrolled as an attorney must, after that person has satisfied all the requirements for a degree referred to in sections 26(1)(a) or (b) of the Act serve under a practical vocational training contract with a person referred to in sub regulation (5) for an uninterrupted period of 24 months, and during the service under a practical vocational training contract; or within a period of no longer than 12 months after the termination of the practical vocational training contract for an uninterrupted period of 24 months, and during the service under a practical vocational training contract; or within a period of no longer than 12 months after the termination of the practical vocational training contract. Ultimately, such candidate must complete a programme of structured course work of not less than 150 notional hours: Provided that if a candidate attorney fails to complete the programme of structured course work within a period of 36 months after the date of registration of a practical vocational training contract, he or she will be required to repeat the course work programme.

Regulation 6(1)(b) provides that:

For an uninterrupted period of 12 months if, prior to the registration of a practical vocational training contract, he or she has completed a programme of structured course work, comprising compulsory modules, of not less than 400 notional hours duration in the aggregate over a period of no longer than six months.

2.2 The different nature of the PVT programs

In simpler terms and following the provisions of regulation 6(1)(a) and 6(1)(b), this means that a candidate who will pursue the program under regulation 6(1)(b) will serve or have to serve their articles of clerkship for a lesser period of time, as compared to a candidate who will pursue a program under regulation 6(1)(a). This puts the latter candidates in a better position as compared to the former candidate insofar as the completion of their articles is concerned. This is with regards to the early

15 Section 6(1)(b) of Act 28 of 2014.

16 Section 6(1) of Act 28 of 2014.

completion of their articles, thus allowing them to obtain admission sooner than candidates without law school.

3 Challenges posed by regulation 6(1)(b)

3.1 Law firm preferring the program under regulation 6(1)(b)

The early completion of articles is not the only benefit that accrues to candidates that chose the program under regulation 6(1)(b). This is because it has been established that majority of law firms prefer their prospective candidate attorney to have completed the latter programs under regulation 6(1)(b). This preference has prejudiced candidates who cannot afford to complete the latter program because of the financial burden placed upon this program thus reducing their chances of obtaining articles.

This is in collaboration with the statement that was made by the Black Lawyers Association's student chapter spokesperson Tejane when he submitted that the problem is not about securing articles, it is also a problem that one have to go to law school and do their PVT.¹⁷

This preference by majority of the law firms is based on the set of beneficial skills and knowledge that PVT offers. These skills are, *inter alia*, developing real-world practical skills, enhancing employability, providing job-ready competence, boosting confidence, allowing for immediate application of knowledge in the workplace, and often being a more affordable education option compared to traditional degree programs. It essentially equips individuals with the necessary skills to excel in their chosen field upon completion of training.¹⁸ All this is achievable through the modules offered by the program.¹⁹

17 Phathu Luvhengo, 'After student "burns LLB degree", graduates urged to do their research centres of despairing' (2023) *Times Live*, <https://www.timeslive.co.za/news/south-africa/2023-11-03-after-student-burns-llb-degree-graduates-urged-to-do-their-research/#> (accessed 14 December 2024).

18 Mabungela M 'Accelerating graduate employability through work-integrated learning' (2024) *Research Gate*.

19 This include Alternative Dispute Resolution, Attorneys' Bookkeeping; Constitutional Practice; Criminal Court Practice; Drafting of Contracts; High Court Practice; Information and communication technology for practice, and associated aspects of cyber law, Introduction to Practice Management; Labour Dispute Resolution; Legal Costs; Magistrate's Court Practice, Matrimonial Law; Personal Injury Claims, Professional Legal Ethics and Wills and Estates.

Most of these modules are offered during the course of the LLB program, however, when they are offered under the PVT program, they are articulated in a more practical and detailed manner, such that the candidate would be able to apply the knowledge acquired in practice. This programme is standardised and uniform throughout South Africa and is based on experiential training defined as ‘notional hours’.²⁰ The skills and knowledge acquired from the program increase their chances of employability as the prospective principal will not have to train the candidate as the case may be with candidates who have not completed the training program as entrenched under regulation 6(1)(b).

This submission is supported by Tejane as he alluded that ‘PVT prepares one to understand what they are doing in a legal setting’. He further submitted that:

law firms have opted to hire graduates who have gone through PVT and are more familiar with the legal fraternity than a graduate who has not undergone the PVT. I call it a barrier, since this means that if you cannot afford law school, you cannot progress to getting articles of clerkship because that is what law firms are looking for.²¹

As a result, graduates need to understand the advantages and disadvantages of deciding to become a legal practitioners.²² However, this results in an imbalance because the disadvantages outweigh the advantages. This is because in addition to the fees levied on PVT, majority of law firms further require their candidates to have their own transportation when serving their articles of clerkship.

3.2 Steepness of PVT fees

As already established above, the PVT program places a financial burden on candidates who wish to be enrolled under it. As of 2025 these fees are levied at a rate of R 20 250.00. Critics have submitted that these fees are reasonable, seeing that the Legal Practice Council has paid a certain

20 Legal Education & Development (n 2).

21 Phathu Luvhengo, ‘After student ‘burns LLB degree’, graduates urged to do their research centres of despairing’ (2023) *Times Live*, <https://www.timeslive.co.za/news/south-africa/2023-11-03-after-student-burns-llb-degree-graduates-urged-to-do-their-research/#> (accessed 14 December 2024).

22 Indeed Editorial Team, ‘Top 11 pros and cons of being a lawyer’ 16 August 2024, <https://www.indeed.com/career-advice/finding-a-job/pros-and-cons-of-being-a-lawyer> (accessed 17 December 2024).

portion of these fees, and the R20 250.00 is the only amount payable by the prospective candidate.²³ This study argues that such criticism would be acceptable coming from a point of privilege. However, for individuals who understand the current economic status of South Africa and form part of the disadvantaged group of the society, it can be established that these fees are relatively high for those who are financially disadvantaged.

The above submission is corroborated by the views shared by the Black Lawyers Association's student chapter spokesperson Tejane that graduates who registered for PVT were paying at least R19 100, 00 which most graduates from disadvantaged backgrounds cannot afford after graduating.²⁴ These were the fees as at 2023, which have since increased in the year 2025. This increase indicates that the needs of marginalised law graduates are not considered. Thus, this inconsideration deters any prospective student who wished to venture into the law field and become an attorney, particularly if they are from a disadvantaged background. These different views and critics seek to perpetuate the distasteful notion that the legal career is meant for the wealthy.

3.2.1 Short-coming of section 6(1)(a)(xi) of LPA (LPC funding)

Section 6(1)(a)(xi) of the LPA deals with the apportionment of the PVT fees by the LPC. The LPC has since provided that on the fees levied upon the latter program, as an organisation, it has taken it upon itself to pay a certain portion of these fees. This is in line with section 6(1)(a)(xi) of Legal Practice Act.²⁵ This provision states that:

In order to achieve its objects referred to in section 5, and, having due regard to the Constitution of the Republic of South Africa, 1996 applicable legislation and the inputs of the Ombud and Parliament, the Council may provide financial support to organisations or centres providing legal education and training, including legal education and training for purposes of compulsory post-qualification professional development, with the object of enhancing the standards of legal services and increasing access to justice'.

23 <https://www.lssa.org.za/wp-content/uploads/2020/09/Legal-Fees-SALRC-Discussion-Paper-150.pdf>

24 NF Mvundlela 'Transformation in the legal fraternity: Response to questions on judge Motha' (2024) *Legal Education Centres*.

25 Act 28 of 2014.

However, reality has proven that this initiative remains inadequate as candidates are still left with the financial burden of R20 250.00 which is payable from their own accord where possible.

3.2.2 *Unprivileged graduates*

It is no foreign issue that there are students that are unprivileged and further relied on government or private funding in order to complete their LLB studies. This reliance is not only on tuition fees but also on other expenses such as food, accommodation and living allowance. It is therefore a flawed perception for the legal governing bodies to expect their prospective candidates to have R20 250.00 to fund their PVT education. This is because the government funding, particularly the one used by many students, the National Student Financial Aid Scheme (NSFAS) does not cover PVT.²⁶ This means that prospective candidates who were funded by NSFAS are left destitute, having to make ends meet in order to obtain admission in PVT. This is because as already established above, PVT increases candidates' employability.

In order to establish that this is no activism work, but rather an actual cry for help, a video surfaced on the famous social media platform TikTok, of a University of South Africa (UNISA) LLB graduate engaged in heart-breaking activity. This student was seen, recording herself burning her LLB certificate, proclaiming how distressed she was. This was after she had stayed unemployed for a period of a year post completion of her studies. Critics submitted that this was an act of stupidity, clout and fame. However, it should not be forgotten what serious mental distress could bring out of a person. This is a clear indication that unemployment is a serious pandemic that which the government ought to fight harder to try and combat. It is particularly harder for one to be at peace being unemployed while they have in their possession a certain qualification. As a result, the fees levied upon PVT create problems such as the one mentioned above because prospective candidates are limited in their pursuit of securing employment because they do not have PVT. A conclusion can therefore be drawn that the LLB certificate on its own

26 National Student Financial Aid Scheme, 'The National Student Financial Aid Scheme (NSFAS) and its impact: Exploring the absorption into employment of NSFAS-funded graduates', <https://www.nsfas.org.za/content/reports/NSFAS%20Complete%20Report.pdf> (accessed 18 November 2024)

remains inadequate for candidates who wish to pursue the traditional legal route.

4 Other alternatives

There are three alternative measures that are available to a law graduate, who cannot afford the fees levied on regulation 6(1)(b) and their shortcomings.

4.1 Legal aid

Legal Aid South Africa is an independent statutory body established by the Legal Aid South Africa Act,²⁷ as amended. The aims of Legal Aid South Africa are, to give legal aid or to make legal aid available to indigent persons within its financial means. To provide legal representation at State expense, as set out in the Constitution of the Republic of South Africa, 1996 (the Constitution) and relevant legislation giving content to the right to legal representation at State expense.²⁸ Furthermore, it provides education and information concerning legal rights and obligations.

The role of Legal Aid South Africa is to provide legal aid to those who cannot afford their own legal representation. This includes poor people and vulnerable groups such as women, children and the rural poor. It must be noted that it does this in an independent and unbiased manner with the intention of enhancing justice and public confidence in the law and administration of justice.²⁹

According to Legal Aid South Africa (LASA), there are 64 Legal Aid SA local offices and 64 Legal Aid SA satellite offices across the country, effectively totalling 128 Legal Aid clinics in South Africa. This means that in as much as legal aid SA does not require prospective candidates to have PVT, the number of legal aid intake is relatively low when compared to the number of law graduates produced throughout South

27 Act 39 of 2014.

28 Legal Aid SA 'Mandate and Mission of Legal Aid South Africa' <https://legal-aid.co.za/legalaidsa/> (accessed 29 November 2024).

29 Legal Aid SA, 'Mandate and Mission of Legal Aid South Africa', <https://legal-aid.co.za/legalaidsa/#:~:text=Legal%20Aid%20South%20Africa%20has%20since%20established%2064%20Legal%20Aid,legal%20aid%20throughout%20the%20country> (accessed 30 November 2024).

African universities each year.³⁰ The advantage that LASA provides is that despite their entry level requirements not requiring the prospective candidates to be in possession of PVT certificates, all candidates will have to complete the PVT prior to being admitted as legal practitioners.³¹ This is advantageous in the sense that it allows the candidates to save enough money while employed by LASA to attend PVT.

4.2 Alternative legal career paths

While many people with law degrees become lawyers, it is not the only potential career path. A law degree develops one's analytical, communication and management skills, preparing them to succeed in various jobs. Understanding which opportunities are available can help one to use his or her law degree in a field that suits their interests.³²

These are, but not limited to: legal research assistant, paralegal, compliance officer, policy analyst, legal writer, contract administrator, mediator, corporate legal consultant, or work in legal tech, focusing on areas where one's legal knowledge is valuable without requiring full legal representation; essentially utilizing their understanding of the law in a supporting role within various industries and or organizations.³³

30 Legal aid South Africa, 'Annual Performance Plan 2024/2025', https://static.pmg.org.za/Legal_Aid_SA_Annual_Performance_Plan_2024-2025___Submission_to_Parliament_for_Tabling.pdf (accessed 30 November 2024).

31 Legal Aid South Africa, 'Future Attorneys Recruitment Programme (Candidate Attorney) – Frequently Asked Questions', <https://legal-aid.co.za/future-attorneys-recruitment-programme-candidate-attorney-frequently-asked-questions/#:~:text=How%20many%20Candidate%20Attorneys%20does,PLT%20before%20submitting%20an%20application> (accessed 31 May 2025).

32 Indeed Editorial Team, '61 Alternative jobs you can get with a law degree (plus salaries)' (2024) Indeed, <https://www.indeed.com/career-advice/finding-a-job/alternative-jobs-with-law-degree> (accessed 01 December 2024).

33 Chief Directorate: Public Education and Communication Department of Justice and Constitutional Development, 'Legal and related careers in the justice system' <https://www.justice.gov.za/brochure/careers-in-justice.pdf> (accessed 2 January 2025).

4.3 The loss of passion for traditional legal career

In contrast to the conventional path of becoming an advocate or lawyer, a law degree is multipurpose and can be used for a variety of purposes.³⁴ Majority of law firms would prefer to hire graduates who have excellent academic transcripts. However, it has been established that preference is given to candidates who have completed PVT over those who have not, regardless of the overall academic performance in their LLB. This is because candidates with PVT are considered to be well equipped since they have been thoroughly trained through the PVT program to prepare them for the work space.

Consequently, this means that any prospective candidate who is passionate about practicing the law by venturing into the traditional legal routes will be deterred from following their passion because of the financial restraints imposed by PVT.

4.4 Other law firms

South Africa has 10,959 law firms, with 62 per cent of them being sole practitioners and 35 per cent having between two and nine attorneys. Only about 30 firms have more than 50 attorneys.³⁵ The legal landscape in South Africa is shaped by a few large firms and many smaller practices. The top three focus areas for most law firms are conveyancing, commercial, and family law. Most of the law firms require their candidates to have PVT, while it is only a few firms that are not complying with this stereotype. The non-compliance with the stereotype by the few law firms gives hope and opportunity to candidates who cannot afford to attend law school.

4.5 Safety and Security Sector Education and Training Authority (SASSETA) funding

Safety and Security Sector Education and Training Authority which is abbreviated as SASSETA refers to financial assistance provided by

34 M Bloem 'The requirement of 'fit and proper' for the legal profession: A South African perspective' (2022) University of Free State.

35 Legal Education & Development, 'Statistics for the attorneys' profession' <https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/> (accessed 25 November 2024).

the Safety and Security Sector Education and Training Authority (SASSETA) to individuals pursuing their candidacy as attorneys, often through a Work Integrated Learning Programme (WILP) in partnership with the Law Society of South Africa (LSSA).³⁶ This allows unemployed law graduates to access PVT and become fully qualified attorneys. This funding typically comes in the form of a discretionary grant that prioritizes candidates from disadvantaged backgrounds or rural areas.³⁷

This initiative was recently introduced in the legal space, and created a much needed relief to unprivileged students. However, the problem with this grant is that it does not cover PVT, but only pays the stipend of candidate attorneys who have secured articles of clerkship from firms where the principal cannot afford to pay the salary of such candidate. Another issue is that in order to be eligible for the funding, one must first have a law firm that will be willing to admit them. The problem with this grant is that the prospective principals are reluctant to admit candidates who use SASSETA funding because of the administration work the principal is required to put in facilitating the processing and approval of the grant for the candidate.

5 Summary and conclusion

5.1 The right to education

The right to education is a constitutionally recognised right. This is by virtue of this right being entrenched in section 29 of the Constitution. Section 29(1)(b) particularly makes provision to the right to higher education and training. Whereby it expressly provides that everyone has the right to further education, which the state, through reasonable measures, must make progressively available and accessible. This provision seeks to establish the notion that it is the duty of the state to ensure that it uses the resources that are available, to ensure that this right is progressively realised and enjoyed. The Constitution does not mandate

36 Legal Education & Development, 'LSSA and SASSETA opportunity for candidate legal practitioners | Candidacy programme', <https://www.lssalead.org.za/news/lead-and-sasseta-opportunity-for-candidate-legal-practitioners/> (accessed 14 December 2024).

37 M Oliphant 'Legal practitioners can access training grants from SASSETA' (2024) *DeRebus*.

free higher education for all, but rather states that the government must take steps to make it progressively accessible.³⁸ The primary aim of the Constitution in this regard is to place a duty on the state to expand access to higher education, particularly for disadvantaged groups, to promote equity. Hence, giving due regard to the right to equality.³⁹

This study does not disregard the progressive realisation nature of this right, in that the state is not obliged to realise this right immediately.⁴⁰ However, insofar as PVT is concerned, which is a form of higher education and training, the state has not taken any measures to ensure that the right is being progressively realised. This is by virtue of the PVT program having commenced on the year 1979 in Pretoria, in the Gauteng province.⁴¹ Due regard is given to the transformation that the government of South Africa underwent, from pre to post democracy. However, this transformation does not award the current government an exception from carrying out its constitutional duties.⁴² This is because it has been 30 years since the democratic government has been given mandate to act in the interest of the public, however, the interest of law graduates insofar as their tuition fees for PVT programs is concerned remains violated. This establishes the notion that there has been a violation of the right to free education to law graduates in South Africa.

Since the country's universities charge fees, bars many from higher education, perpetuating the marginalisation of those previously disadvantaged by the apartheid regime.⁴³ This study concurs with this submission and further submit that if the issue of PVT fees is not

38 S Nxasana 'SA has the means to make higher education more accessible' (2024) Rhodes university.

39 Section 9 of the Constitution of the republic of South Africa.

40 L Chenwi 'Unpacking "progressive realisation", its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance' (2013) *De Jure Law Journal* 39.

41 Law Society of South Africa, 'Becoming a legal practitioner' [https://www.lssa.org.za/about-us/about-the-attorneys-profession/becoming-a-legal-practitioner/#:~:text=The%20admission%20requirements%20for%20legal%20practitioners%20\(attorneys,Rules%20promulgated%20in%20terms%20of%20the%20Act..&text=The%20practical%20vocational%20training%20requirements%20were%20published,Act%20and%20gazetted%20on%2031%20August%202018.](https://www.lssa.org.za/about-us/about-the-attorneys-profession/becoming-a-legal-practitioner/#:~:text=The%20admission%20requirements%20for%20legal%20practitioners%20(attorneys,Rules%20promulgated%20in%20terms%20of%20the%20Act..&text=The%20practical%20vocational%20training%20requirements%20were%20published,Act%20and%20gazetted%20on%2031%20August%202018.) (accessed 20 December 2024).

42 AJ Barnard 'Chapter 4: Transformation, the Constitution and contract law' (2006) University of Pretoria.

43 D Griffiths, '#FeesMustFall and the decolonised university in South Africa: Tensions and opportunities in a globalising world' (2019) *Science Direct*.

addressed, the department of higher education and training may have yet another fees must fall catastrophe in their hands. This is because marginalised law graduates are unable to afford the tuition fees of PVT and the government is not taking any measures to try and mitigate the situation.

5.2 The need for radical transformation and disruptive thinking

The legal space is a very competitive one. There are many law students that have been admitted in the system and many law graduates that have been produced. It is therefore unfortunate that there is not enough resources and law firms to handle the masses entering the workplace.⁴⁴ In light of this submission, it can be established that there is a need for radical transformation in the legal profession, particularly in the traditional legal paths, being articles of clerkship. This is in light of the fact that majority of law graduates are more inclined into that route.

Tejane submitted that they have since noted such but are yet to engage with relevant stakeholders to determine how they can best assist.⁴⁵ The proposed engagement needs to be made promptly, bearing in mind the delicacy of the matter since the future and mental health of marginalised law graduates is at stake. History has proven that it is particularly lawyers who advocate for the right to equality.⁴⁶ This focus is often on human rights law, utilizing the country's Bill of Rights to challenge discriminatory practices and promote equal access to justice, through the enactment of legislation such as Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA).⁴⁷

Furthermore, there are also publications by prominent scholars such as Rossouw (fighting for gender equality), Ngcukaitobi (specializing in constitutional law), and lawyers working within organizations like the Equal Education Law Centres (EELC) which advocates for equality

44 C Rethore, '5 Reasons why policies & procedures are important for your business' (2024) *Polyglot group*.

45 P Luvhengo, 'After student 'burns LLB degree', graduates urged to do their research centres of despairing' (2023) *Times Live*, <https://www.timeslive.co.za/news/south-africa/2023-11-03-after-student-burns-llb-degree-graduates-urged-to-do-their-research/#> (accessed 14 December 2024).

46 YA Vawda 'Access to justice: From legal representation to promotion of equality and social justice – addressing the legal isolation of the poor' (2005) *Sabinet African Journals*.

47 Act 4 of 2000.

in education access.⁴⁸ However, it is unfortunate that the financial discriminatory practice posed by PVT programs upon law graduates remains undisputed.

The Equal Education Law Centres (EELC), provides a walk-in clinic, offering legal support to individuals and communities where learners' rights are prejudiced.⁴⁹ In addition, the centres act as a source of referral for Equal Education (EE) members and supporters who encounter prejudicial or otherwise unlawful conduct in their schools. Through its clinic, EELC's lawyers provide legal support, litigation and, where necessary, on the ground interventions to assist marginalised learners and community members in realising the rights to equality, dignity and education.⁵⁰ As a result, this study calls for intervention from the Equal Education Law Centres (EELC) to intervene in this regard. This is in light of the infringement of the right to higher education and training,⁵¹ of candidates who cannot afford PVT fees and the government not taking any reasonable measures to intervene in this regard.

6 Recommendations

This study submits some recommendations that may be employed by the relevant bodies to ensure that issues that was submitted by this study may be resolved. Firstly, there must be negotiations between LPC and Council for Higher Education (CHE). This proposed negotiation is for the sole purpose of finding common ground on how PVT may be nationalised to allow for government funding of the program. This proposed negotiation is substantiated by section 6(1)(a)(ix) of the Legal Practice Act and section 39(1) of the Higher Education Act. This is by virtue of these provisions respectively, providing that:

Section 6(1)(a)(xi) of LPA

48 C Chürr 'Realisation of a child's right to a basic education in the South African school system: Some lessons from Germany' (2015) *SciELOSA*.

49 Equal Education Law Center 'Our work' <https://eelawcentre.org.za/#:~:text=The%20EELC%20provides%20a%20walk,unlawful%20conduct%20in%20their%20schools>. (accessed 27 December 2024).

50 Equal Education Law Center 'Advocating for equal rights. South Africa's copyright law needs to enhance accessibility of reading materials to blind and visually impaired people' <https://eelawcentre.org.za/blindsa-pr/> (accessed 2 January 2025).

51 Section 29(1)(b) of the Constitution of the Republic of South, Africa 1996.

In order to achieve its objects referred to in section 5, and, having due regard to the Constitution, applicable legislation and the inputs of the Ombud and Parliament, the Council may provide financial support to organisations or centres providing legal education and training, including legal education and training for purposes of compulsory post-qualification professional development, with the object of enhancing the standards of legal services and increasing access to justice.⁵²

Section 39(1) of the Higher Education Act

The Minister must, after consulting the CHE and with the concurrence of the Minister of Finance, determine the policy on the funding of public higher education, which must include appropriate measures for the redress of past inequalities, and publish 15 such policy by notice in the Gazette.⁵³

In light of the above provisions, it can be submitted that the LPC in collaboration with the CHE must nationalise PVT. This should be done to allow for government funding of the PVT program, for prospective candidates who cannot afford to cover the fees and who qualify for the funding based on a merits criterion that will be set by the respective bodies, as the case is with the NSFAS and other respective bursaries and scholarships. This is because PVT qualifies as higher education, the only detriment is that it is not public higher education since it is not offered by and within the four corners of the public higher education centres, hence prejudicing most candidates.

6.1 Nationalisation of PVT accredited centres

A private centres can be nationalized by the government acquiring ownership of the company through either direct purchase of shares from existing owners or by expropriation (seizing control) with or without compensation, effectively transferring the company's assets and management into public hands, placing it under state control.⁵⁴ In some centres, the need for nationalisation is promoted if a private company holds a monopoly and is not adequately serving the public interest, nationalization might be considered.⁵⁵ In light of this, it can be submitted that the Law Society of South Africa has abused its power in failing to

52 Act 28 of 2014.

53 Act 101 of 1997.

54 Act 71 of 2008.

55 *S du Plessis 'Nationalizing South African mines: an economic assessment' (2013) SciELOSA.*

incorporate and allow for government to own a stake in the organisation to allow for public funding for the candidates who wish to pursue their articles of clerkship by covering their law school fees.

6.2 Offering PVT at universities level and continued funding by bursaries

Alternatively, the PVT program can be offered at university level, to allow students to have their bursaries fund the program. This would then mean that students who wish to pursue the traditional legal route of being an attorney or advocate will have their studies extended for a period of six months, to allow them to complete their PVT at university level, where they will be funded.