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**AIDS LAW PROJECT  
SUBMISSION ON  
THE LEGAL SERVICE CHARTER**

**TO**

**THE DEPARTMENT OF JUSTICE AND THE LEGAL SERVICES  
CHARTER STEERING COMMITTEE**

**16 FEBRUARY 2006**

**Board of Directors:** Ms V. Dubula (Chairperson), Justice J. Kriegler (Deputy Chairperson), Mr N. Ndlovu (Treasurer),  
Prof. Q. Abdool-Karim, Mr A. Achmat, Dr B. Brink, Prof. G. Fick (ex-officio), Prof. S. Fonn (ex-officio), Mr M. Heywood (Executive Director), Prof. P. Kruger, Ms T. Steele

AIDS Law Project, a section 21 company (2006/021659/08) and a registered law clinic,  
is formally associated with the School of Law at the University of the Witwatersrand, Johannesburg.

## **INTRODUCTION**

1. The AIDS Law Project (ALP) is a section 21 not-for-profit company and a registered law clinic. It is formally associated with the School of Law of the University of the Witwatersrand, Johannesburg. The ALP was established in 1993 as a project of the Centre of Applied Legal Studies at the University of the Witwatersrand, Johannesburg. The focus of the ALP's work is on the development, implementation and use of laws and policies to protect and advance the rights of people living with HIV / AIDS. Central to our work is the Constitution of the Republic of South Africa, the rights it entrenches and the negative and positive obligations it imposes on the state. The ALP provides free legal services with the aim of protecting and promoting the rights to equality, dignity and of access to health care services,

## **OUR INTEREST IN THE CHARTER**

2. Apart from our obvious interest in this Charter as a provider of legal services, we have been centrally involved in broader efforts to expand access to justice. In February 2005, the ALP co-hosted a conference on improving access to legal services for people living with HIV. The conference was attended by over 150 delegates, representing 78 organisations, including legal services and human rights organisations, Chapter Nine institutions, the Legal Aid Board, paralegal advice offices from rural and urban areas, private law firms, and non-governmental and community-based organisations representing people living with HIV, as users of the legal system. A copy of the consensus statement signed by participants is attached as Annexure "A", for your information. At the conference, participants identified a number of major barriers that prevent people poor and marginalised groups from using the legal system to challenge unfair discrimination and access their constitutional rights. These barriers include:

- A lack of information about the rights enshrined in the Bill of Rights, as well as the lack of effective mechanisms for the realisation of these rights;
- The inaccessibility of legal services, particularly for civil and human rights matters; and
- The unjustifiably high cost of private legal representation, in the absence of a comprehensive state legal assistance programme

3. The conference participants also acknowledged that improving access to the justice system is particularly urgent in the context of the HIV epidemic: not only do people living with HIV experience continued stigma and discrimination in all spheres of life, but there are increasing numbers of people affected by the epidemic who require access to the justice system in order to claim the basic socio-economic rights such as access to health care, social security, food and housing. We therefore endorse paragraph 4.2.1 of the Legal Aid Board's submission on the Legal Services Charter, which proposes that the Charter should specifically acknowledge factors which have an impact on the nature and scale of the demand for legal services, including the HIV / AIDS epidemic.
  
4. Our submission is based on research and information presented at the aforementioned conference on access to legal services, as well as on our own experience as an organisation which has been operating in the field of human rights and legal service provision for the past 14 years. In addition to conducting public impact litigation, the ALP provides a free paralegal advice and assistance service to people living with HIV who have experienced discrimination or human rights violations. In 2006, the ALP dealt with approximately 340 paralegal matters, involving issues ranging from the rights of children affected by the epidemic, confidentiality, access to social security, health care and medical treatment, prisoners' rights, stigma and harassment in communities, and workplace discrimination.

## **SUMMARY OF RECOMMENDATIONS**

5. The following is a summary of our key recommendations:
  - 5.1. In terms of Section 34 of the Constitution, the Department of Justice and Constitutional Development has an obligation to ensure the realisation of the right to access to justice, which includes access to legal services. The Charter alone is insufficient to discharge this obligation, and key aspects of the Charter cannot be implemented without legislative reform. The state must therefore:
    - Develop a comprehensive framework for the realisation of the right to access to justice, including access to legal services;
    - Allocate an adequate budget for the implementation of the framework that includes increased funding to the Legal Aid Board and the Chapter 9 institutions for the provision of legal services in civil and human rights matters; and
    - Ensure that the appropriate legislation is in place as a necessary first step.

5.2. The Charter consultation process should be broadened to include representatives of civil society and of users of legal services, and representatives of these sectors should be included in the Steering Committee. Information on the consultation process should be well advertised, and readily available to the public.

5.3. The Department of Justice and Constitutional Development should engage with the Bar Councils to ensure their involvement in the Charter process, and to discuss the development of other mechanisms, to address aspects of transformation of the profession which cannot be adequately dealt with via a transformation charter.

5.4. The Charter proposes the reduction of the practical training requirements for entry to the legal profession. These proposals will hinder the work of the Legal Aid Board and other institutions which provide legal services to the poor, and will undermine transformation by setting new entrants to the profession up for failure. Instead of reducing the amount of practical training required, the Charter should focus on reducing the financial hardship associated with practical training by extending bursary schemes and improving remuneration for law graduates during practical training.

5.5. The sections of the Charter dealing with access to legal services should commit stakeholders to clear, specific, properly defined undertakings and targets, which form part of a coherent and implementable programme of action. Each undertaking should therefore include information on:

- Who is tasked with overall responsibility for the undertaking;
- Who will provide the funding for the initiative; and
- When and how the undertaking will be implemented.

5.6. There is a need for evidence-based planning: the strategies adopted by the Charter should be based on evidence from appropriate national research, and the budget allocated to improving access to justice must be based on research and proper financial planning

5.7. The need for legal services should be defined in terms of the recipient's socio-economic position rather than their geographical location

5.8. The Charter should recognise the importance of community-based legal service provision and education, and should include commitments by stakeholders for the development and funding of initiatives to provide such services

### **CONCERNS REGARDING THE CHARTER PROCESS**

6. Before engaging with the content of the Charter we wish to raise several concerns regarding the consultation and drafting process. Firstly, we are concerned that the consultation process has not been well advertised to the public. For example, our organisation only became aware of the process after the National Indaba had already taken place. We attempted to follow the process with the intention of participating when the opportunity arose, but we could find no information on the submission process in press releases from the Department of Justice and Constitutional Development, or on the Department's Website. We only learned of the January 31<sup>st</sup> 2007 deadline after a colleague from another non-governmental organisation mentioned it to us in passing. Fortunately, we were able to obtain an extension from the Department, but there may well be other organisations whose work is relevant to the issues dealt with by the Charter, and who are unable to participate in the process due to the lack of readily available information.
7. Second, we have been unable to obtain information on the basis on which members of the Steering Committee were appointed. The organisations included appear to represent the legal profession, the Department and academia, but it appears that civil society organisations, including major providers of legal services to the poor, are not represented. It is also unclear whether the organisations represented on the Steering Committee are mandated to represent specific sectors, and if so, what their accountability should be to the sector that they represent.
8. Third, we are also concerned by the domination of the private legal sector in the consultation process. While the involvement of the private sector is vital to the process of developing the Charter, Section 12 (a) of the Broad-Based Black Economic Empowerment Act No. 53 of 2003 requires the involvement of all major stakeholders in the development of the Charter. We therefore submit that the drafting and consultation process cannot be limited to the legal

profession and academia, but must include participation by civil society organisations involved in the provision of legal services, as well as organisations representing the users of legal services.

9. The AIDS Law Project has sent two letters (dated 26 January 2007 and 12 February 2007 respectively) to Mr Neville Gawula of the Department of Justice and Constitutional Development requesting clarification on these issues. To date we have not received a response. Copies of these letters are attached hereto as Annexures “B” and “C”.

10. To ensure greater participation in the consultation process, the Department should ensure that all events and deadlines are well publicised in the media, and that the pages of the Department’s Website dealing with the Charter process are regularly updated. The Charter consultation process should also be broadened to include civil society, both as providers of legal services, and as representatives of the users of such services. The following important stakeholders should be represented on the Steering Committee:

- The Legal Aid Board;
- The Legal Resources Centre;
- Lawyers for Human Rights;
- The South African Human Rights Commission;
- Black Sash;
- Organisations representing specific interest groups who are users of the legal system, such as organisations representing people living with HIV, women’s rights organisations, children’s rights organisations, et cetera; and
- The Association of University Law Clinics

#### **THE STATE’S DUTIES IN TERMS OF SECTION 34 OF THE CONSTITUTION**

11. Our primary concern relating to the current draft of the Charter is the lack of attention given to the state’s constitutional obligations. The preamble to the Charter mentions the constitutional duties of the state and, in section 10.4., the Charter refers to the state’s “constitutional, moral and social responsibility for ensuring the realisation of the right to access to justice...” However, the Charter does not provide sufficient detail on what this responsibility entails. There is also no indication of whether the Charter (which, as a stand-alone mechanism, is clearly inadequate to discharge the state’s constitutional obligations) is intended to be part of a broader process to ensure access to

legal services. On 26 January 2007, we wrote to Mr Neville Gawula, the Head of the Steering Committee Secretariat, and requested information, including what else, besides the Charter, the Department of Justice and Constitutional Development is doing to comply with its constitutional obligations regarding access to justice. As stated in paragraph 9 above, we did not receive a response to our queries.

12. In terms of Section 34 of the Constitution, “everyone has the right to have any dispute that can be resolved by application of the law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum”. Section 35 of the Constitution deals with the rights of arrested, detained and accused persons, including the right to legal representation. In terms of Section 7(2), the state has a duty to respect, protect, promote and fulfil these rights.

13. The state generally discharges its obligations in terms of Section 35 (3) (g) by providing funding to the legal aid board, who provide legal assistance to accused persons without the means to employ the services of a lawyer. But the state’s obligations in terms of Section 34 go beyond merely providing the court infrastructure, and must include addressing the barriers which prevent access to the courts. One of the greatest barriers to access to justice is the lack of the lack of access to legal services.

14. In *President of the Republic of South Africa and Another v Modderklip Boerdery* (2005 (5) SA 3 (CC); 2005 (8) BCLR 786 (CC), para. 39 – 40.), the Constitutional Court highlighted the importance of Section 34, stating:

“Section 1(c) of the Constitution refers to the “[s]upremacy of the constitution and the rule of law” as some of the values that are foundational to our constitutional order. The first aspect that flows from the rule of law is the obligation of the state to provide the necessary mechanisms for citizens to resolve disputes that arise between them. This obligation has its corollary in the right or entitlement of every person to have access to courts or other independent forums provided by the state for the settlement of such disputes...In *Chief Lesapo v North West Agricultural Bank and Another*, Mokgoro J pointed to some of the consequences that section 34 and the rule of law seek to avoid when she stated that

‘[t]he right of access to court is indeed foundational to the stability of an orderly society. It ensures the peaceful, regulated and institutionalised mechanisms to resolve disputes, without resorting to self-help. The right of access to court is a bulwark against vigilantism, and the chaos and anarchy which it causes. Construed in this context of the rule of law and the principle against self-help in particular, access to court is indeed of cardinal importance....’

The mechanisms for the resolution of disputes include the legislative framework, as well as mechanisms and institutions such as the courts and an infrastructure created to facilitate the execution of court orders (footnotes omitted).

15. It is therefore vital for the state to put in place the necessary legislative and policy framework to ensure the realisation of the right to access to justice. However a legislative framework alone may not be enough. In *Modderklip*, the Court stated that the state's obligation 'goes further than the mere provision of the mechanisms and institutions referred to above . . . The precise nature of the state's obligation in any particular case and in respect of any particular right will depend on what is reasonable, regard being had to the nature of the right or interest that is at risk as well as on the circumstances of each case.' [at para 43]
16. The state's obligations in this regard cannot be subject to negotiation through a Charter process. For example, it will be very difficult to obtain consensus among stakeholders on some measures, such as the regulation of fees charged by legal practitioners, but the state cannot put itself in a position where it is forced to abandon important measures because of a lack of agreement among stakeholders. Some measures require legislative reform, and must be submitted to the rigours of the Parliamentary process.
17. Despite the absence of relevant legislation the Charter requires stakeholders to commit themselves to positions, such as the introduction of a national regulatory body (in section 5.8.) and changes to the qualifications required for admission to the profession (in section 5.8.2.). Legislative reform is the responsibility of Parliament, and it is in our opinion inappropriate to pre-empt the Parliamentary process in this manner, particularly since the Parliamentary consultation process must necessarily be broader than the consultation within the sector required by the Charter process. We therefore welcome the fact that the Legal Practice Bill has been placed on the Parliamentary programme for 2007.
18. In terms of the delivery of legal services, we recognise that the private sector can make an important contribution to service provision through the types of measures proposed in the Charter, such as a *pro bono* system (section 12.2.3.) But interventions by the private sector and civil society will obviously not be adequate to address the magnitude of the need. The state will therefore

have to assume responsibility for funding certain aspects of legal service provision, which will require proper costing and the provision of an adequate budget.

19. The Legal Aid Board plays a vital role in provision of services to the poor, but at present the bulk of its budget is allocated to providing representation in criminal matters. The Board has repeatedly stated that it recognises the need to provide legal services in civil matters, but requires additional funding in order to extend its civil legal services. We strongly support the allocation of additional funding to the Legal Aid Board for this purpose.

20. However, the mandate of the Legal Aid Board is to provide services to the indigent. The state also needs to introduce measures to address the position of those who fall into the gap between the wealthy who can afford to pay for legal services and the indigent who can be serviced by the Legal Aid Board and other institutions that apply means tests, such as University Law Clinics. There are, for example, many workers who earn too little to afford legal fees, but too much to qualify for legal aid. At present, many such people are denied their right to access the courts.

21. The Chapter 9 institutions supporting constitutional democracy also have an important role to play in the state's provision of legal services. The Human Rights Commission is particular has responsibilities in terms of educating the public on the Bill of Rights, and in enforcing basic human rights through the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, and the Promotion of Access to Information Act 2 of 2000. In our recent submission to the Ad Hoc Parliamentary Committee on the Review of the State Institutions Supporting Constitutional Democracy, the ALP argued that the mandate of the South African Human Rights Commission (SAHRC) should be expanded to allow it play a much more active role in assisting members of the public protect their human rights through mechanisms such as the Equality Courts. A copy of our submission, which contains our full recommendation on the role of the SAHRC, is available on the ALP website<sup>1</sup>.

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<sup>1</sup> <http://www.alp.org.za/modules.php?op=modload&name=News&file=article&sid=340>

## **PROVISIONS OF THE CHARTER RELATED TO THE TRANSFORMATION OF THE LEGAL SERVICES SECTOR AND BLACK ECONOMIC EMPOWERMENT**

22. The ALP considers the transformation of the legal profession as an important and necessary step in the creation of a non-racist and non-sexist society, as envisaged by the Constitution. We therefore generally support the objectives of the Charter as far as they relate to the transformation of the legal services sector, promoting skills development to empower historically disadvantaged individuals, and promoting representivity with regard to ownership of legal practices and access to legal work.
23. One of the strengths of the Charter is that it is able to address access to justice issues in so far as there is an over-lap between such issues and the provisions relating to BEE. An example is the inclusion of requirements for *pro bono* work on the BEE scorecard, which would provide an added incentive for law firms to give more time to *pro bono* work.
24. However we are concerned about certain limitations, some of which are inherent in a Charter of this nature. We believe that the transformation process will need to go beyond the scope of the current Charter, in order to be effective. In this regard, the Charter is problematic in at least two respects. The first is the perception that it creates that transformation itself will necessarily result in greater access to legal services. The second relates to the inadequacy of the Broad-based Black Economic Empowerment framework to achieve transformation amongst the advocates' profession.
25. With regard to the first issue, we are concerned that the focus of the Charter remains primarily on equity within the legal services sector. The provisions relating to access to legal services not only receive less attention (six pages of the 44 page document are specifically devoted to improving access to legal services, in addition to a few scattered paragraphs included in sections dealing with other issues), but are not dealt with in the same detail as the provisions relating to transformation of the profession.
26. At times, the Charter also appears to conflate transformation of sector and access to legal services. For example, section 12.1.1. of the Charter describes problems relating to access to affordable legal services in townships and rural areas, and then proceeds to discuss the need to improve access to "legal

work” for small practices in these areas. This appears to be linked to the discussion of the viability of small practices, which is dealt with in section 7.6. on enterprise development, but there is no explanation of how these firms are going to be made financially viable while still charging “reasonable fees”, particularly since section 12.1.5. goes on to state that “(t)he majority of South Africans cannot afford to pay for legal services, and many cannot afford to pay the level of fees charged”.

27. Access to legal services and the transformation of the profession are two separate but occasionally interlinked issues, and the realisation of the right to access to justice and legal services cannot be dealt with *through* transformation of the legal profession.

28. With regard to the second issue, we submit that the Charter may be useful for regulating the transformation process in law firms, particularly larger firms, where targets relating to ownership and employment equity can be set and monitored through the provisions of the Employment Equity Act. However, this approach is unlikely to be effective in addressing the transformation of the Bar, which involves individuals rather than firms or companies. The Bar Councils therefore have a crucial role to play in ensuring transformation, and we therefore note with concern that the representative of the General Council of the Bar has resigned from the Steering Committee<sup>2</sup>.

29. The definition of “legal practitioner” in the Charter includes advocates, and there are a number of provisions included in the Charter that we assume are intended to be binding on both advocates and attorneys (for example, in section 7.4., the commitment by the “legal profession” to develop a pool of black professionals for accelerated professional development). If advocates are not meaningfully involved in the drafting and consultation process, it is difficult to see how these provisions of the Charter can be considered binding upon them. As set out in paragraph 8 above, the Broad-Based Black Economic Empowerment Act clearly states that a transformation charter can only be gazetted if the Minister is satisfied that it has been developed by major stakeholders in the sector. The lack of involvement by a significant section of the legal profession is thus extremely problematic.

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<sup>2</sup> Information obtained from Department of Justice and Constitutional Development Website, [http://www.doj.gov.za/salsc/steering\\_comm.htm](http://www.doj.gov.za/salsc/steering_comm.htm)

## **PROVISIONS RELATING TO THE PROMOTION OF EQUALITY IN THE JUDICIARY**

30. The ALP supports the proposal that the legal services sector should be more involved in judicial education (section 9.2.2. of the Charter). We also support section 9.2.3.1. to the extent that it calls for the legal services sector to commit itself to ensuring greater alignment of the culture and values prevalent in the justice system, with the values enshrined in the Constitution.
31. In our own work, we have direct experience of lack of sensitivity to the position of socially marginalised groups such as people living with HIV, on the part of some members of the judiciary. We therefore welcome any initiative to provide training to prospective and existing judicial officers, which emphasises the constitutional values of equality and human dignity.
32. In principle, we also support the establishment of an independent complaints mechanism for the judiciary.

## **PROVISIONS RELATING TO ENTRY TO THE PROFESSION**

33. As we note in paragraph 17 above, changes to the entry requirements for the legal profession can only be made through legislative reform, and cannot be addressed through the Charter process.
34. In addition to this, we share the concerns of the Legal Aid Board (LAB) with regard to the recommendations contained in section 5.8.2., which refer to a six-month period of community service followed by six months of vocational training. Not only would this undermine the work of the LAB and other organisations which rely on two years of service from candidate attorneys to deliver services to poor and marginalised communities, but it would also result in graduates with no practical experience at all providing legal services to people in poor and under-resourced communities, which is at odds with the Charter's commitment to ensuring that quality legal services are available to all, regardless of their socio-economic circumstances.
35. We are also concerned that drastically reducing the number of years of practical training required for entry to the profession would in fact undermine the transformation of the profession, by setting up new entrants to the

profession for failure. The six months of community service and six months of vocational training proposed by the Charter would be insufficient to equip graduates to run their own practice, and law firms would be reluctant to employ under-qualified legal practitioners.

36. Rather than reducing the requirements for practical training, it would be preferable to address the financial hardships experienced by law graduates through an extended system of bursaries (which could be provided by both the state and the private sector), combined with improved funding for remuneration of candidate attorneys employed by institutions such as the Legal Aid Board. A compulsory community service period could then either be added over and above the current requirements for entry to the profession, or the state could encourage community service, for example by providing student loans which would not require repayment if the student, on graduating, completed two years of service with an institution providing legal services to the community.

#### **LACK OF CLARITY AND SPECIFICITY IN THE PROVISIONS RELATING TO ACCESS TO LEGAL SERVICES**

37. The vagueness of chapter six of the Charter makes it difficult to envisage how it could be implemented. It does not define the action that needs to be undertaken, set any specific targets, or assign responsibilities to specific stakeholders.

38. For example, section 12.2. of the Charter refers to undertakings by “the government, legal profession, and other stakeholders” without giving any indication of who exactly is responsible for the undertakings which are then listed. The general impression of this section is that it represents a “wish-list” rather than a set of clear commitments.

39. Section 12.2.2.1., for example, states that “stakeholders” undertake to “expand the reach (sic) paralegal services to rural, peri-urban and township areas to provide primary care legal services”. There is no indication of who will take primary responsibility for this massive undertaking, who will fund it, or when and how it will be implemented.

40. There is also a lack of internal coherence between the various commitments. Sometimes several different initiatives are listed to address the same problem,

without an indication of how these will function together as a whole. For example, section 12.2.7. commits stakeholders to developing a “mechanism similar to the *mzanzi* initiative to ensure comprehensive access to legal services across the country and for all economic classes.” No definition of the “*mzanzi* initiative” is provided, but we assume that this refers to the *mzanzi* bank accounts offered to low income earners by South African banks. In relation to access to legal services, this suggests that some sort of private sector initiative is envisaged, perhaps involving legal insurance, but how this relates to section 12.2.6., which refers to a process for expanding legal insurance, is unclear.

### **THE NEED FOR EVIDENCE-BASED PLANNING**

41. We note that section 12.1.1. of the Charter refers to a general shortage “in numbers and distribution of the legal practitioners in the country”. While we agree that there is disproportionate concentration of legal services in urban and affluent areas, to the detriment of poor and rural areas, we have been unable to find any research to support the contention that there is a shortage in the *number* of legal practitioners in the country. Again, in our letter of 26 January 2007, we specifically requested Mr Gawula’s advice as to whether the information contained in the Charter was based on research or evidence, specifically on the number of legal practitioners in the country and the number of law graduates per year.

42. It seems to us that the number of law graduates who qualify for entry to the profession each year surpasses the available supply of paying legal work. If this is true, it would explain why there is so much competition for positions in law firms, and would also be an important factor in the failure of many small practices.

43. The need for evidence-based planning is even more acute when it comes to the funding of initiatives to improve access to legal services. If it has not already done so, we strongly recommend that the Department of Justice should conduct research on how much of its budget is currently allocated to access to justice and legal services, whether this money is being spent effectively, and how much additional state funding will be needed for the realisation of the rights enshrined in Section 34 of the Constitution.

44. Similarly, there is a need to define the current gap in the availability of legal services in a more nuanced manner. In the Charter, there is repeated reference to the lack of services in townships and rural areas, which is in our opinion an over-simplification of the problem. Firstly, this excludes informal urban and peri-urban settlements, where there is often less service provision than in established townships. It also does not address the position of poor individuals and communities which exist within more affluent areas. For this reason, defining the need in terms of geographical location rather than the socio-economic position of the recipient is problematic.

#### **THE ROLE OF PRO BONO INITIATIVES**

45. The ALP supports the section 12.2.2.1. of the Charter, which proposes a system of incentives to encourage legal practitioners to engage in pro bono work. We welcome the proposed development of a more effective *pro bono* system, and we strongly support the concept giving *pro bono* work weighting on the employment equity scorecards.

46. *Pro bono* work by private law firms has the potential to play an important role in improving access to legal services for poor and under-served communities. We therefore support the submission made by ProBono.Org in as far as it suggests that the impact of *pro bono* legal services can be increased if it is focused on public interest matters (defined as matters which deal with issues of public concern, which impact on disadvantaged or marginalised groups, or which affect a significant number of people and not merely an individual). However, while the greater involvement of private firms in public impact matters would broaden access to justice, we would also like to caution that there is also a great need for the provision of services to individuals in human rights matters. The majority of non-governmental organisations who provide legal services focus on public interest matters, as described above. But after the test cases have been won and the precedents have been set, there is a need for the provision of legal services to individuals who subsequently wish to use the precedent in order to claim their own rights, which non-governmental organisations often do not have the capacity to meet. We are of the opinion that *pro bono* work by private legal practitioners could play an important role in providing services in these “day-to-day” human rights matters.

47. We note the concerns raised ProBono.Org's submission regarding the introduction of compulsory minimum requirements for *pro bono* work by legal practitioners. It may be true that many practitioners will treat the minimum requirement as a maximum, and only do the amount of work prescribed. But at present, the majority of *pro bono* work is being conducted by only a few motivated practitioners, and even if other practitioners do only a bare minimum, this has the potential to dramatically increase the *pro bono* services available to poor individuals and communities.

### **THE IMPORTANCE OF COMMUNITY-BASED LEGAL SERVICES**

48. The access to legal services conference (as discussed in paragraphs 2 – 4 above) identified that paralegal services, as provided by community-based advice offices, are often the most accessible, appropriate and cost-effective means of providing access to legal services.

49. Advice offices also play an important role in providing legal education to the communities whom they serve. In South Africa, paralegal services have generally been provided by non-governmental and community-based organisations, which rely on international donor funding. In recent years, there has been a decline in the number of donor organisations that are willing to fund community-based paralegal services. As a result, many advice offices have closed down or been curtailed in their functioning. The decline in the number of functioning advice offices has created a major gap in the provision of legal services to poor communities, which should be addressed by the Charter.

50. In addition to paralegal advice services, the conference participants also identified the need to provide training and support to non-legal community-based organisations, which often have a greater out-reach capacity than legal organisations, and are therefore well placed to provide public education on human rights.

51. Following from the conference, the ALP and other conference participants have entered into a partnership with the Treatment Action Campaign (TAC), aimed at training and capacitating TAC volunteers to act as community justice workers. These community justice workers will not be involved in the delivery legal services, but will work to inform their communities about their human

rights, as enshrined in the Constitution, and empower them to use the law in order to protect and promote these rights. In addition to providing community education, the justice workers will refer individuals who require legal assistance to a network of service providers.

52. We hope that this project will provide a blue-print for an effective method of community legal education. If the Department of Justice and Constitutional is interested in using this model as the basis for a broader public education initiative, in partnership with the private legal services sector, we would like to offer our support and assistance. We strongly believe that public legal education will only be effective and sustainable if it is conducted in a spirit of equal partnership with community-based organisations, and serves to empower and capacitate community activists. We sincerely hope that we will have the opportunity of collaborating with the Department in the development of such as initiative.

## **CONCLUSION**

53. The ALP would like to thank the Legal Services Charter Steering Committee, the Department of Justice and Constitutional Development, and in particular the Charter Secretariat for the opportunity to make this submission. We look forward to continued participation in the consultative process.

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