

# SECTION 27

## incorporating the AIDS Law Project

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**“Health equity cannot be concerned only with health, seen in isolation. Rather it must come to grips with the larger issue of fairness and justice in social arrangements, including economic allocations, paying appropriate attention to the role of health in human life and freedom.”**

Amartya Sen, “Why health equity?”  
in *Health Economics* (2002) vol 11 no 8 p 659

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### Introducing SECTION 27

**SECTION 27** will be established in mid-2010 as a South African-based public-interest law centre that seeks to influence, develop and use the law to protect, promote and advance human rights. **SECTION 27**'s main activities will include research, advocacy and legal action to change the socio-economic conditions that undermine human dignity and development, prevent poor people from reaching their full potential and lead to the spread of diseases that have a disproportionate impact on the vulnerable and marginalised.

**SECTION 27** draws its name from section 27 of the South African Constitution, which lies at the heart of our supreme law's commitment to socio-economic rights. This section, which locates the right to health within a context of mutually supporting and intersecting rights, provides that:

- (1) Everyone has the right to have access to –
  - (a) health care services, including reproductive health care;
  - (b) sufficient food and water; and
  - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

**SECTION 27** will incorporate the AIDS Law Project (ALP). It will retain a strong focus on human rights in relation to HIV/AIDS and access to health-care services. But it also recognises that the realisation of all rights – and socio-economic rights in particular – is fundamental to sustainable progress in reducing new HIV infections and ensuring sustained access to treatment. With this in mind, **SECTION 27** will begin to focus on strategies to ensure the rights to sufficient food and

basic education. It will also try to ensure that the conduct of both the state and the private sector accords with the Constitution and the obligations it imposes on our day-to-day conduct.

**SECTION 27** will not work alone. It will be part of a constellation of organisations – including the Treatment Action Campaign (TAC), Equal Education (EE), the Community Media Trust (CMT), and Students for Law and Social Justice (SLSJ) – that base their activities on the Constitution and the rule of law. **SECTION 27** will act as the legal representatives of such organisations on important strategic and precedent-setting issues. **SECTION 27** will also assist in building strategic and organisational capacity where appropriate, including by way of leadership training, internship programmes, strategic planning and/or the provision of legal advice.

## Building on foundations laid by the ALP

As already indicated, **SECTION 27** incorporates the ALP. An independent, not-for-profit company from 2006 to 2010, the ALP was first established – by Constitutional Court Justice (then Professor) Edwin Cameron in 1993 – as a project of the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand, Johannesburg. Between 1993 and 2010 the ALP used legal research, litigation and human-rights advocacy to push government and the private sector to recognise the need for a rights-based response to HIV/AIDS and to develop appropriate plans and programmes to prevent and treat HIV infection. In so doing, the ALP developed and used the law, and helped bring into being a comprehensive legislative and policy framework to protect the rights of people with HIV.

In partnership with its allies, in particular the TAC (which the ALP helped found in 1998), the ALP's work contributed directly to:

- the 2003 launch and progressive expansion of the antiretroviral (ARV) treatment programme
- the availability in South Africa of affordable generic ARV medicines
- the development and adoption of the groundbreaking national *HIV and AIDS and STI Strategic Plan for South Africa, 2007-2011* (NSP)
- the restructuring and strengthening of the South African National AIDS Council (SANAC) in 2006/07
- growing public awareness of the nature and importance of protecting human rights in responding to HIV/AIDS
- social mobilisation to protect and fulfil the rights of people living with HIV

A number of factors influenced the direction of the ALP's work. These included:

- a Bill of Rights in a Constitution that encourages civil society activism and use of law in the development and implementation of a comprehensive rights-based legal framework
- the embrace of AIDS denialism by former President Thabo Mbeki and the need to fight this

- the growth of HIV in South African to epidemic proportions
- developments in science that led to the development of safe and efficacious medicines for the treatment of HIV

During its first decade the ALP focused almost exclusively on HIV/AIDS. This was necessary because of the dearth of law and policy to protect human rights and the need to work with other organisations to impress upon government and society the threat HIV poses to life and rights. However, the political and social landscape around HIV did not stand still. The need to secure and build on advances in policy and law required a steady broadening of the scope of the ALP's activities as the first decade of the new millennium progressed.

Thus, from 2005 onwards, the ALP began increasingly to focus on the state's duties regarding the health system as a whole – on health systems law, policy and reform. In 2009, for example, the ALP's four major interventions dealt with:

- the financial crisis in the Free State health system that led to a moratorium on ARV treatment
- critiquing the process and proposals for a national health insurance (NHI) system
- working with the state and its institutions to design and develop systems to ensure the efficient and effective registration and procurement of medicines of proven quality, safety and efficacy
- intervention in the Constitutional Court in the *Nyathi* case dealing with the issue of state liability for judgment debts, compliance with court orders and the rule of law

Lately the ALP has partnered with the Legal Resources Centre (LRC), Lawyers for Human Rights (LHR) and Médecins Sans Frontières (MSF) in responding to the refugee crisis in central Johannesburg, which has included working to protect the right of access to health-care services.

It is now clear that to sustain the response to HIV it is necessary squarely to address new challenges that have arisen in our society. In particular this will mean:

- campaigning for equity, equality and quality in the health system: we believe that constitutional rights, and the duties they place on public and private actors, can be used to ensure growing equity in access, equality of treatment and quality of services provided
- promoting awareness in and out of government of the obligations the Constitution places on both public and private health sectors, and ensuring awareness of and compliance with these duties and their integration into all areas of policy and law-making
- ensuring that the public health sector provides access to health-care services and discharges its mandate in accordance with the Constitution and the National Health Act
- ensuring that the key social determinants of health, particularly access to nutritious food and basic education, are realised progressively
- defending the Constitution and its foundational values and fundamental rights from attack – for instance, by seeking to ensure the independence of the judiciary

## Combining constitutional activism and legal action

The ALP's strength lay in its:

- strategic focus, allowing it to become a recognised and credible voice in its areas of expertise
- ability to combine research, advocacy and litigation
- partnerships, in particular with the TAC

**SECTION 27** will continue and develop this method, by combining high-quality research and legal work with social movement strengthening and coalition building. Like the ALP, **SECTION 27** will place the Constitution at the heart of its work, focusing on using and developing the law to defend and advance fundamental human rights, at both a jurisprudential and a practical level.

## A new force for human rights

Given the changing legal, political and social challenges facing South Africa, refocusing became a logical progression of the ALP's work. Among other things recent political developments – particularly the Zuma administration's express commitments in respect of HIV/AIDS and, more broadly, access to health-care services – required the adoption of a new approach. But it remains essential to continue to link law to social justice campaigns: a legal campaign on its own has very limited prospects of improving people's health and lives.

As a result, the ALP's Board of Directors and members decided in 2009 to incorporate the organisation into a new not-for-profit company that has since been established as **SECTION 27**. This decision followed considerable internal discussions, meetings with donors, one-on-one consultations and a small consultative meeting with key partners and supporters to test ideas on the need for and the nature and focus of a new organisation.

## Vision, mission and objectives

**SECTION 27** will seek to contribute towards the progressive realisation of socio-economic rights, with a particular focus on the right of access to health-care services, the positive and negative obligations the Constitution places on public and private bodies, and the legal and political conditions necessary for sustaining rights under the rule of law. In our view, HIV/AIDS will remain the litmus test for the delivery of health services over the coming years: for example, the epidemic poses major issues in respect of appropriate budgeting and expenditure. It thus offers an entry point for tackling the systemic problems that confront the health system.

Consequently **SECTION 27**, in conjunction with its partners, will continue with activities that aim to promote the NSP, strengthen SANAC and defend and realise existing policy and established rights. Unlike the ALP, however, **SECTION 27** will not require that there always be a direct link to HIV/AIDS in the issues we address. Put simply, **SECTION 27** has a broader focus on socio-economic rights. In addition, the pursuit of rights to health, food and education

necessitate that we also be prepared to address foundational rule-of-law questions such as openness, accountability and the regulation of both public and private power.

Therefore **SECTION 27**'s vision is to advance equality of opportunity leading to:

- the deepening of democracy by ensuring that law- and policy-making in all spheres of government – particularly in relation to key socio-economic rights – is open, accountable, consultative and guided by the state's duty to respect, protect, promote and fulfil constitutional rights and values
- a measurable and significant improvement in access to health-care services, effective and sustainable HIV prevention and treatment programmes, and better health outcomes
- a clear definition of the meaning of the right to basic education and the responsibilities this places on the state in relation to investment in and regulation of education
- a clear definition of the meaning of the right to sufficient food and the responsibilities this places on the state to take measures to alleviate pervasive hunger and malnutrition
- the development of a political culture of governance that places constitutional obligations to realise rights and reduce inequality at the forefront of all policy- and law-making

**SECTION 27** will work towards this vision by:

- working with and strengthening organisations fighting to advance the human rights of poor people, particularly so as to ensure the implementation of evidence-informed HIV/AIDS programmes, sustained access to quality health-care services and an adequately resourced and equitable school system that enables poor children to realise their potential
- monitoring and creating public awareness about the realisation of key socio-economic rights and investigating systematic violations of these rights
- pursuing litigation, other forms of legal action and rights-based advocacy
- developing and using the law to defend and advance constitutionally protected rights
- speaking out in defence of the Constitution and establishing legitimacy and a reputation as an organisation that defends and promotes constitutional rights and values as an integral aspect of social and economic development

## **SECTION 27's areas of focus**

Over the next five years, **SECTION 27** will work to achieve the following five short- to medium-term goals:

**1) IMPLEMENTATION OF THE NSP: Implementation of key aspects of the NSP, with a particular focus on respect for and the promotion of human rights, as well as the building and/or strengthening of SANAC structures to ensure good governance and accountability**

- Implementation of key priority area 4: Human Rights and Access to Justice

- Strengthening of key civil-society organisations working on HIV/AIDS
- Consolidation of SANAC as an effective and efficient structure primarily responsible for co-ordinating the implementation, monitoring and evaluation of the NSP
- Appropriate budgeting for and expenditure in relation to ARV treatment and other key interventions identified in the NSP
- Sustainable and uninterrupted provision of ARV treatment, in part through appropriate monitoring by SANAC and its constituent members

**2) REFORM OF PUBLIC AND PRIVATE HEALTH SYSTEMS: Better quality and affordability of public and private health systems as an integral step towards the creation of a national health insurance (NHI) system**

- A reasonable plan on NHI developed by the Ministerial Advisory Committee on NHI
- An informed civil society aware of the law and the right of access to health-care services and the obligations this imposes on public and private actors
- A developed legal framework for the regulation of both public and private health sectors

**3) IMPROVED ACCESS TO FOOD AND BASIC EDUCATION: Increased public investment in health-related socio-economic rights such as sufficient food and basic education and their appropriate regulation**

- Better utilisation of legal action and human-rights advocacy by partner organisations working to achieve rights to food and education
- Agreement by the Department of Basic Education on a reasonable plan for ensuring access to school libraries for learners across South Africa
- A more developed legal framework on the right to sufficient food

**4) REGULATION OF PUBLIC AND PRIVATE POWER IN THE INTERESTS OF EQUALITY: Ensuring that the conduct of relevant organs of state and of those who exercise significant private power in relevant fields accords with the Constitution**

- More effective parliamentary oversight over the Executive
- The maintenance of the foundational values of the Constitution
- The maintenance of judicial independence
- A better understanding of the constitutional obligations of the private sector in relation to the rights to health and education
- Increased equality of access to essential services provided by the private sector
- A developed legal framework regulating private power, particularly in the health industry

**5) PROMOTION OF HUMAN RIGHTS REGIONALLY AND INTERNATIONALLY: Seeking to influence respect for human rights and the rule of law regionally and internationally**

- Strengthened civil-society organisations and partners working in the field of human rights in selected developing countries
- Respect for and the protection and promotion of human-rights norms and standards in identified countries

## Who's who at SECTION 27

**SECTION 27's** Board of Directors is made up of the following distinguished people:

- Vuyiseka Dubula (chairperson) – General Secretary, TAC
- Johann Kriegler (deputy chairperson) – former justice of the Constitutional Court
- Nhlanhla Ndlovu (treasurer) – programme manager, Centre for Economic Governance and AIDS in Africa
- Quarraisha Abdool-Karim – Centre for the AIDS Programme of Research in South Africa, Nelson R. Mandela School of Medicine, University of KwaZulu-Natal
- Brian Brink – medical director, Anglo American
- Sharon Fonn – representing the School of Public Health, University of the Witwatersrand, Johannesburg
- Mark Heywood (executive director)
- Marius Pieterse – representing the School of Law, University of the Witwatersrand, Johannesburg
- Theo Steele – organising secretary, Congress of South African Trade Unions (COSATU)

**SECTION 27** has the following staff members:

- Muhammad Abdul-Rahim – finance manager
- Jonathan Berger – senior researcher and director of policy and research
- Nathan Geffen – researcher
- Adila Hassim – advocate and director of litigation and legal services
- Mark Heywood – executive director
- Brian Honermann – investigator/researcher
- Nonkosi Khumalo – researcher (currently seconded to the TAC as full-time chairperson)
- Linda Lea – acting chief operating officer
- S'khumbuzo Maphumulo – attorney
- Phindile Mlotshwa – office assistant
- Shalom Ncala – receptionist
- Ella Scheepers – researcher and personal assistant to the TAC chairperson
- John Shija – researcher and personal assistant to the executive director
- Nasser Sujee – finance officer
- Agnieszka Wlodarski – attorney
- Vacant – administrative officer
- Vacant – communications officer

## **SECTION 27's local, regional and international partners**

**SECTION 27** operates in formal and informal partnerships with a number of organisations. In addition to our primary partners – the TAC, EE, CMT and SLSJ – **SECTION 27** also works closely with these local, regional and international partners:

### *Local partnerships*

- The Rural Health Advocacy Project: this originated as a joint project of the ALP, the Rural Doctors Association of Southern Africa (RUDASA) and the Centre for Rural Health at the University of the Witwatersrand
- The School of Law at the University of the Witwatersrand: **SECTION 27** is formally associated with the School and senior members of **SECTION 27** staff have honorary researcher/senior researcher status at the School
- ProBono.Org: **SECTION 27** refers cases it receives to this organisation, which has a service that provides free legal assistance to people with HIV and refugees
- Health-e News Service: **SECTION 27** works with this specialist media organisation in order to publicise its own work and to provide and receive information; it has also provided legal services to the organisation
- MSF South Africa
- The Budget Expenditure and Monitoring Forum (BEMF): this forum has grown out of and seeks to build on the Joint Civil Society Monitoring Forum (JCSMF), which drew together a wide range of civil-society and other non-governmental partners involved in monitoring the implementation of the ARV treatment programme; with a particular focus on budgeting for and public expenditure on the NSP (which includes the ARV treatment programme), BEMF seeks to focus civil society attention on what are arguably the weakest aspects of the NSP
- SANAC: **SECTION 27** co-ordinates SANAC's Law & Human Rights Sector and works in partnership with other sectors to ensure implementation of the NSP; in addition, **SECTION 27's** executive director currently serves as the Deputy Chairperson of SANAC

### *Regional and international partnerships*

- AIDS and Rights Alliance for Southern Africa (ARASA): the ALP was a founder member of this regional grouping of law and human-rights organisations and a senior **SECTION 27** staff member sits on ARASA's steering committee
- Korekata Law Centre, Beijing: the ALP established a partnership in 2007 to provide Korekata with strategic guidance, training and exchange visits so as to assist with the promotion of the rule of law and human rights in the response to HIV/AIDS in China, and **SECTION 27** will continue this work
- O'Neill Institute for Global and National Health Law, Georgetown University Law Center, Washington DC.

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